

2 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

3 TYLER DIVISION

4 MIRROR WORLDS, LLC \* Civil Docket No.  
5 VS. \*  
6 APPLE, INC., ET AL \* 6:08-CV-88  
\* Tyler, Texas  
\* October 1, 2010  
\* 9:00 A.M.

7

8 TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE

9

## 10 APPEARANCES:

11 FOR THE PLAINTIFF

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24 (Proceedings recorded by mechanical stenography,  
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2 (Jury out.)

3 THE COURT: Please be seated.

4 All right. The Court has reviewed the  
5 parties' briefing on this issue of Apple's objection to  
6 the claims of the -- let's see, what was it, the '313  
7 and the -- what's the other one? '313 and the '227 --

8 MR. RANDALL: That's correct, Your Honor.

9 MR. DIBERNARDO: -- patents should not be  
10 included in the Charge.11 And I guess the question I have for Apple  
12 is, was this raised in JMOL when you raised the JMOL  
13 with regard to indirect infringement? Did you raise  
14 that that would knock this out --

15 MR. RANDALL: Well, Your Honor --

16 THE COURT: -- as well?

17 MR. RANDALL: It -- we did raise it when  
18 we -- should I take the --

19 THE COURT: Yes, please. Thank you.

20 MR. RANDALL: Yes, Your Honor.

21 When we raised JMOL, we identified the  
22 grounds. We identified the indirect infringement. I  
23 don't -- I don't think we specifically identified these  
24 claims in this patent, but, nonetheless, we -- it would  
25 cover it. I mean, we didn't identify these specific

2 We did --

3 THE COURT: Well, I understand you're  
4 arguing as a matter of law it now knocks them out if the  
5 Court has granted JMOL on indirect infringement, right?

6 MR. RANDALL: I'm sorry. I didn't --

7 THE COURT: You're arguing now that if --  
8 since the Court granted JMOL on the indirect  
9 infringement, that, as a matter of law, knocks out  
10 these -- these two patents?

11 MR. RANDALL: That's correct, Your Honor.

12 THE COURT: I'm not sure that's the case.  
13 I granted the JMOL with regard to the indirect  
14 infringement, because there was no expert testimony that  
15 I recall tying up or -- or expressing an opinion about  
16 that.

17 Now, in their briefing, the Plaintiffs  
18 have raised the issue that there's certain -- that there  
19 is evidence of user use of these methods that would  
20 provide for direct infringement.

21 That's a very close call, I think, as to  
22 whether -- and I'd be glad to hear argument as to  
23 whether there can be enough evidence to show that a user  
24 used these in order to constitute direct infringement  
25 but not enough to constitute indirect infringement.

2 MR. RANDALL: Yes, Your Honor.

3 THE COURT: Do you care to respond to

4 that?

5 MR. RANDALL: I would, Your Honor.

6 And here's what we brought up on JMOL,

7 and it applies equally to this issue. And that is that

8 they failed to completely, whether through expert

9 testimony or factual testimony or documents, to provide

10 evidence regarding indirect infringement, specifically

11 as to inducement and contributory infringement.

12 So, for instance, on the inducement

13 charge, they have to show that the alleged infringer

14 actively encouraged or instructed another person on how

15 to --

16 THE COURT: Well, I -- I understand that.

17 But I guess my question is, is the standard -- I

18 understand what the standard is for inducement, but can

19 they -- do they have to prove inducement in order to get

20 direct infringement under these two method claims --

21 claim tests?

22 MR. RANDALL: Yes, Your Honor.

23 And there are two issues that we're

24 dealing with. Number one is, did they fail to produce

25 evidence of inducement and contributory such that they

can get all of these sales of these products into

2 And the answer is no.

3 So they clearly didn't show any

4 inducement or encouragement. So that's all out for  
5 sure.

6 The second issue I think that you're  
7 dealing with is, do the claims really require some other  
8 party to participate? They're saying they proved direct  
9 infringement only on these very, very narrow  
10 circumstances, for instance, when someone was, you know,  
11 using the computer on a videotape or something like  
12 that.

13 Let me address their evidence on that  
14 subject.

15 First of all, they cite about 15 exhibits  
16 in this brief. Only one -- only one of those exhibits  
17 was PX1676 was a reviewer's guide that shows -- that  
18 they rely on. So they rely on that for direct  
19 infringement. That's insufficient.

20 The issue that I think you're grappling  
21 with is, does it require another person, another entity?  
22 And, Your Honor, the claims clearly do. And if we look  
23 at the claims --

24 THE COURT: Well, is Apple taking the  
25 position, though, that none of these that they sold,

1 that no users turned them on?  
2 MR. RANDALL: We're taking the position  
3 twofold. One, the claims require another entity, a user  
4 to do something. And because they didn't provide  
5 sufficient evidence on that subject, specifically on  
6 inducement and contributory, their entire claims fall,  
7 period.

8 If the Court disagrees with that for  
9 whatever reason, then the -- the issue is whether  
10 or not the -- they have sufficient evidence of direct  
11 infringement.

12 So if, for instance, the Court says, no,  
13 I don't think these claims require a user -- I think  
14 that would be wrong, if you said that -- then their  
15 direct infringement claim is limited to some -- you  
16 know, limited use of -- of those claims.

17 THE COURT: Well, what if I say they --  
18 these direct infringement claims do claim a user; but  
19 there is sufficient circumstantial evidence of use,  
20 although not enough to rise to the level of inducement  
21 but enough to rise to the level of use by Apple?

22 MR. RANDALL: All right. Let me address  
23 that specific issue.

24 That's -- that's the one -- the one  
25 document that they submitted and only one exhibit out of

2 And so if you found that, Your Honor, we  
3 would ask for an instruction. Number one, we'd ask that  
4 the damages be taken away from the jury, because that --  
5 that particular act of infringement would not be  
6 sufficient to justify damages.

7 But secondly, Your Honor, if you said,  
8 no, I think it is, we'd ask for an instruction that  
9 Mirror Worlds cannot obtain damages other than for the  
10 specific instances of direct infringement by an Apple  
11 employee that Mirror Worlds has identified in the  
12 record, if any.

13 THE COURT: Okay. Thank you.

14 Let me hear a response.

15 MR. DIBERNARDO: Respectfully, Your  
16 Honor, I don't believe counsel addressed the threshold  
17 issue, and that is, do -- do we need to show direct  
18 infringement by a user for Apple to directly infringe  
19 these method claims?

20 And the answer is no, we do not. That's  
21 the Elantech case cited in our brief. The capability of  
22 the software to perform that method has enough for a  
23 finding of direct infringement. It's that capability  
24 that's built into the software.

25 With regards to contributory

2 THE COURT: Well, every other case I've  
3 ever had like this, they've always had their expert  
4 testify or their expert has testified as to inducement,  
5 which solved this. But your expert didn't express any  
6 opinions on that, did he?

7 MR. DIBERNARDO: He didn't use those  
8 words, Your Honor. But as even cited in Apple's brief,  
9 he stepped through a user performing functions that did  
10 evidence the Apple computer, the Apple software  
11 performing the recited method.

12 So with regard to the contributory inducement  
13 infringement, there is proof. In fact, Apple just said  
14 there is at least one evidence. There is one item, the  
15 reviewer's guide. And then to the Lucent standard, that  
16 one piece of evidence is enough. It can address it --  
17 directly addresses that point.

18 One piece of --

19 THE COURT: So -- and you're asking the  
20 Court to reconsider its JMOL on -- on inducement?

21 MR. DIBERNARDO: We are, and  
22 contributory. Throughout the case, we've seen  
23 contributory --

24 THE COURT: But your expert did not  
25 testify as to those, did he?

2 issue as to whether or not a user uses these methods was  
3 presented. There are user surveys that go directly to  
4 the accused features.

5 In fact, Mr. Bratic, for example, relied  
6 on the Spotlight survey out of the -- and this is  
7 not to --

8 THE COURT: He may have testified to the  
9 facts; but just so I'm clear, did he express any  
10 opinions regarding inducement of contributory  
11 infringement?

12 MR. DIBERNARDO: He did not use those  
13 words; but he did step through how a user, when the  
14 machine is turned on, performs this method.

15 THE COURT: Okay. And I understand that,  
16 and I don't believe that it's necessary that you have an  
17 expert express an opinion, if you've otherwise got the  
18 facts and evidence to support a cause of action.

19 But I guess my question is, if the Court  
20 were to grant that and reverse its ruling on the JMOL,  
21 where does that leave us?

22 Because Defendants already put on its  
23 whole case and did not address any of those, because  
24 they were no longer in the case.

25 Are we back to reopening evidence and

2 MR. DIBERNARDO: These claims were still  
3 in the case with regard to Apple's direct infringement,  
4 so the proof was put on. In fact, that goes back to the  
5 threshold issue, to prove Apple's direct infringement  
6 under these method claims, is there even a need to get  
7 to this secondary -- the indirect liability question to  
8 prove the user's direct use.

9 And the answer there is no. It's the  
10 capability that's in the software and that --

11 THE COURT: Well, I'm not going to  
12 reverse my JMOL rulings on the contributory and  
13 inducement. I'm going to stand by those.

14 But I am going to submit the -- the issue  
15 of direct infringement, based upon your arguments, as to  
16 the '313 and '227. But I think it's a tricky legal  
17 issue as to whether you're right that there's enough  
18 evidence there to support a direct infringement under  
19 those claims, or whether they're right that there has to  
20 be -- that there is not enough evidence regarding use of  
21 those products.

22 I recall enough circumstantial evidence,  
23 I think, in the case, although not rising to the level  
24 of inducement or contributory, that it sort of defies  
25 logic to me that the users did not turn on these

2 evidence in the case to support the jury verdict on  
3 that.

4                   But I want to look at it closer  
5 post-verdict, when we're not -- you know, it's 9:00  
6 o'clock. The jury's in there waiting.

7                   So what I'm going to do is I'm going to  
8 go ahead and submit it as to those, but I want to parse  
9 out the damage questions and will submit separate damage  
10 issues as to the '313 as -- the '313 and the '227, and a  
11 separate damage issue as to the -- what's the other one,  
12 the '427?

13                  MR. DIBERNARDO: The '313 and '227 are  
14 the method claims.

15                  THE COURT: Right. The separate one as  
16 to those and then a separate damage question as to the  
17 other one.

18                  Now, let me hear your arguments as to  
19 whether that's a good idea or a bad idea.

20                  MR. CARROLL: Your Honor, I'll be doing  
21 the argument, and I did the damage for our side. Of  
22 course, we based our damage model on the accused  
23 features.

24                  And I think both sides can argue to the  
25 jury what they -- how they suggest the jury apportion

2 give any.

3 THE COURT: Let me ask this, Mr. Carroll:

4 Do you believe that the damages can be apportioned  
5 between those two groups of patents?

6 MR. CARROLL: I think -- and I don't want  
7 this to sound flip, but I think the jury can do whatever  
8 they want.

9 THE COURT: I'm talking about as a matter  
10 of law. I know the jury can do whatever they --

11 MR. CARROLL: I don't have a clue, Judge.  
12 I mean, all I know is --

13 THE COURT: That's an honest answer.

14 Response?

15 MR. RANDALL: Yeah, Your Honor, two  
16 issues.

17 One, on these claims, they simply didn't  
18 put in the evidence of direct infringement that each of  
19 these elements of these two claims require -- or two  
20 patents are part of the method claims, they didn't  
21 produce the evidence that suggested that any user on  
22 some video practiced each and every element.

23 But in any event --

24 THE COURT: Okay. You may be right. I'm  
25 going to go ahead and submit them, so I've got a finding

2 MR. RANDALL: With respect to the  
3 instruction, Your Honor, they are apparently relying on  
4 some unidentified instance of direct infringement, some,  
5 you know, user in a video or something.

6 I don't even know what they're relying  
7 on, but it's a limited instance of direct infringement.  
8 And I said it doesn't show the elements. But in any  
9 event on that issue, Your Honor, Apple requests an  
10 instruction that Mirror Worlds cannot obtain damages on  
11 those two patents, other than for the specific instances  
12 of direct infringement by an Apple employee that Mirror  
13 Worlds has identified in the record, if any.

14 Now, if want to argue, and they should,  
15 on that subject to the jury, that here's the Apple  
16 employee that we've identified and here's the things --

17 THE COURT: Okay. Excuse me. I'm going  
18 to deny your request for that instruction. You can --  
19 you're a very capable lawyer. You can argue that to the  
20 jury, and the jury can sort that out.

21 Now, my question is, though -- and I want  
22 to give both sides -- you know how I'm going to submit  
23 it. Now, I'm going to give both sides the opportunity  
24 for a very brief reopen, if you want to address the  
25 apportionment of damages, because we were originally

2 now breaking it out by apportionment.

3 So does Defendant wish to offer any  
4 additional evidence with regard to that?

5 MR. RANDALL: Well, I do object to  
6 reopening the record, if we had a chance to do that.

7 But, Your Honor -- no, Your Honor. We  
8 don't -- we don't agree with reopening the record.

9 THE COURT: The reason I'm doing this,  
10 though, is because, if I'm going to have two damage  
11 verdicts -- the reason I'm doing that is where if I  
12 throw out the '313 and the '227, I've got some damage  
13 number to throw out. Otherwise, the Court's just going  
14 to be guessing, if I throw it out, as to how much of the  
15 jury's verdict was attributable to the '313 and the '227  
16 and how much to the '427.

17 MR. RANDALL: All right. And so are you  
18 contemplating, Your Honor, just opening up briefly the  
19 record to allow them to show what damages they claim for  
20 those two method --

21 THE COURT: Well, I will allow -- I'm  
22 contemplating opening it up for both of you for 10 or 15  
23 minutes each. I was going to ask you how long you  
24 thought you would need to put on your respective damage  
25 people to address if -- since it's going to be submitted

2 as separate issues, to address how much should be  
assessed to each of those separate issues.

3 So my question is, does Defendant wish to  
4 do that? Wish to offer any? Or you may want to think  
5 about it for a few seconds.

6 MR. RANDALL: Your Honor --

7 THE COURT: I'll allow up to 15 minutes  
8 per side for your expert to address this issue. Each  
9 side will have 15 minutes for direct and  
10 cross-examination to either put on your expert or  
11 cross-examine their expert.

12 MR. RANDALL: Right. And part of that --  
13 part of my uncertainty there is, I don't know what  
14 evidence they're going to put on. I haven't seen an --  
15 you know, I have no idea what things they're going to  
16 claim.

17 THE COURT: I don't -- let me ask you, do  
18 you want to put on any evidence as to that  
19 apportionment?

20 MR. DIBERNARDO: Your Honor, I don't  
21 know -- I don't know that we've made a decision.

22 THE COURT: All right. The Court is  
23 going to take a five-minute recess.

24 MR. RANDALL: Can I raise one issue, Your  
25 Honor?

2 into the record the -- Apple's motion for JMOL regarding  
3 judgment as a matter of law.

4 It is --

5 THE COURT: Just a moment. Are you  
6 reading in what -- what the JMOL motion you made the  
7 other day?

8 MR. RANDALL: Well, I'm certainly  
9 renewing it, and there's some additional information in  
10 here. And Rule 50(a)(2) says that a motion for JMOL may  
11 be made at any time before the case is submitted to the  
12 jury. And I would simply like to put it on the record,  
13 Your Honor.

14 THE COURT: All right.

15 MR. RANDALL: Thank you, Your Honor, very  
16 much.

17 Your Honor, Apple hereby moves for  
18 judgment as a matter of law against all of Mirror  
19 Worlds' claims and counterclaims and for judgment as a  
20 matter of law in favor of Apple's declaratory judgment  
21 and counterclaims and defenses.

22 First, Apple renews its former motions  
23 for judgment as a matter of law submitted to the Court  
24 on September 29 and 30 of 2010.

25 Second, Apple moves for JMOL of

2 The accused products do not implement a mainstream.  
3 Their claims that require a mainstream, Mirror Worlds  
4 accuses the Spotlight Store of meeting the Court's  
5 construction of a mainstream, which is a stream that is  
6 inclusive of every data unit or document received by or  
7 generated by the computer system.

8 However, the parties in this case have  
9 presented uncontroverted and undisputed evidence that  
10 the users can adjust their Privacy settings to exclude  
11 private documents from the Spotlight Store. In this  
12 manner, the store is not inclusive of every data unit  
13 received or generated by the computer and cannot  
14 constitute a mainstream.

15 Judgment as a matter of law of  
16 non-infringement should, therefore, be granted as to  
17 Claims 13 and 22 of the '227 patent and Claim 2 of the  
18 '313 patent.

19 Third, Apple moves for JMOL against  
20 Mirror Worlds' willful infringement claim on the  
21 following additional bases:

22 The claims of the '227 and '313 should be  
23 dismissed with prejudice as method claims for which  
24 there can be no direct infringement by Apple. The sole  
25 remaining patent in this case would then be the '427

2 However, all of Mirror Worlds' evidence  
3 regarding knowledge of Mirror Worlds and Scopeware  
4 products dates to December 2003 and before. During that  
5 time, it would have been impossible for Apple to have  
6 known about the '427 patent.

7 Apple, therefore, moves for judgment as a  
8 matter of law of no willful infringement.

9 Fourth, Apple moves for judgment as a  
10 matter of law of non-infringement on the system claims  
11 of the '427 patent, because they specifically require a  
12 user sliding, without clicking, the cursor or pointer to  
13 display glance views.

14 Apple's customers are the users of the  
15 accused products, not Apple. Mirror Worlds has failed  
16 to offer any evidence or testimony regarding users of  
17 the accused products.

18 Judgment as a matter of law on  
19 non-infringement should be granted for Claims 1, 8, 16,  
20 18, and 25 of the '427 patent.

21 Fifth, Apple has offered clear and  
22 convincing evidence that all claims of the  
23 patents-in-suit are anticipated as publicly used, known,  
24 or previously published in the prior art, because each  
25 claim element exists or is necessarily implied in the

2 Design Workscape System, Apple's Piles System, Dantz  
3 Development Corporation's Retrospect System, Lotus  
4 Development's Lotus Magellan System, the Spatial Data  
5 Management System, the Lifestreams System, the MEMOIRS  
6 System, On Technologies, On Location System, U.S. Patent  
7 No. 5,621,906, and the English translation of Japanese  
8 Patent No. --

9 THE COURT: Counsel, how much more do you  
10 have on that?

11 MR. RANDALL: Just -- I think it's two  
12 pages, Your Honor.

13 THE COURT: All right.

14 MR. RANDALL: Japanese Patent  
15 No. 6-180661, a file search method, dated 1992.  
16 Mirror Worlds has failed to rebut Apple's clear and  
17 convincing evidence of anticipation. Judgment as a  
18 matter of law of invalidity of the patents-in-suit  
19 should, therefore, be granted.

20 Sixth, Apple has offered clear and  
21 convincing evidence that all claims of the  
22 patents-in-suit are anticipated by the statutory bars  
23 under 35 U.S.C. Section 102, which include but are not  
24 limited to:

25 The claimed invention was already

2 in the world more than one year before the filing date  
3 of the patent application.

4                   The claimed invention was already being  
5 publicly or commercially used in the United States more  
6 than a year before the filing date of the application  
7 and was not primarily in experimental use whether the  
8 invention worked as intended purpose.

9                   Mirror Worlds has failed to rebut Apple's  
10 clear and convincing evidence of anticipation by  
11 statutory bars. Judgment as a matter of law of  
12 invalidity of the patents-in-suit should, therefore, be  
13 granted.

14                   Seventh, Apple has offered clear and  
15 convincing evidence that all claims of the  
16 patents-in-suit are invalid as obvious to one of  
17 ordinary skill in the art at the time the patent  
18 application was filed.

19                   One of ordinary skill in the art would  
20 have been motivated to combine the prior art relied upon  
21 in this case, because all publicly known document  
22 management systems, many of which were presented at  
23 Computer-Human Interface Interaction conferences.

24                   All claims of the patents-in-suit are  
25 rendered obvious for at least the following

2 view of MEMOIRS and Piles; Workscape in view of SDMS;

3 and TR-1070 in view of Workscape and Piles.

4 Secondary considerations also suggest

5 that the patents-in-suit are obvious; that the claimed

6 invention failed to meet a long-felt need. The

7 invention and its commercialization were not successful

8 in the marketplace.

9 There's no evidence that other copied --

10 others copied or claimed the invention. The invention

11 did not receive significant praise and recognition in

12 the industry and did not delivered unexpected results.

13 Mirror Worlds has failed to rebut Apple's

14 clear and convincing evidence of obviousness. Judgment

15 as a matter of law of invalidity of the patents-in-suit

16 should, therefore, be granted.

17 Eighth -- I'm half a page away, Your

18 Honor -- Apple moves for judgment as a matter of law

19 that the patents-in-suit are invalid for improper

20 inventorship. Persons may be inventors even if they do

21 not make the same type or amount of contribution or

22 contribute to the subject matter of every claim of the

23 patent.

24 The patents-in-suit fail to disclose the

25 actual inventors and only the actual inventors.

2 Nicholas Carriero, Scott Fertig, both of whom are not  
3 named in Mirror Worlds' patents.

4 Mirror Worlds has failed to rebut Apple's  
5 claim by clear and convincing evidence of improper  
6 inventorship.

7 Judgment as a matter of law of invalidity  
8 of the patents-in-suit should, therefore, be granted.

9 For these reasons, judgment as a matter  
10 of law should be granted against each of Mirror Worlds'  
11 claims and counterclaims. And judgment as a matter of  
12 law should be granted in favor of Apple's declaratory  
13 judgment counterclaims and defenses.

14 Your Honor, thank you.

15 THE COURT: Thank you, counsel. The  
16 motion is denied.

17 All right. Did the parties have an  
18 opportunity to decide whether you wish to have -- to  
19 present any additional testimony?

20 MR. DIBERNARDO: We don't believe it's  
21 necessary, Your Honor.

22 THE COURT: Okay.

23 MR. RANDALL: We don't believe the record  
24 should be open, so we're --

25 THE COURT: All right. Then we're going

2 maybe ten until we get the Charge in final form, and  
3 then we'll come back in and proceed with charging the  
4 jury and closing arguments.

5 We'll be in recess.

6 COURT SECURITY OFFICER: All rise.

7 (Recess.)

8 COURT SECURITY OFFICER: All rise.

9 (Jury in.)

10 THE COURT: Please be seated.

11 All right. Good morning, Ladies and  
12 Gentlemen of the Jury. Sorry to keep you waiting. We  
13 had a few more issues that we had to deal with before I  
14 give you your final instructions.

15 You are near the end of your journey. As  
16 you will recall when the jury was picked: We've now  
17 been through opening statements. You've heard all the  
18 evidence. You're about to hear the Court's final charge  
19 to you, which will be given to you orally, but a written  
20 copy will be provided for you when you go to the jury  
21 room. And then you're going to hear closing arguments  
22 by each side.

23 And then, hopefully around noon, you will  
24 retire to the jury room to select your foreperson, have  
25 some lunch, and begin your deliberations.

2 you the Court's Charge.

3 Ladies and Gentlemen of the Jury:

4 You have now heard the evidence in this  
5 case. I will now instruct you on the law that you must  
6 apply. It is your duty to follow the law as I give it  
7 to you. On the other hand, you, the jury, are the  
8 judges of the facts.

9 Do not consider any statement that I may  
10 have made during the course of the trial or in these  
11 instructions as any indication whatsoever that I have an  
12 opinion about the facts of this case. Again, that is  
13 your sole province. Just as I am the Judge of the law,  
14 you are the judge of the facts.

15 After I instruct you on the law, the  
16 attorneys for both sides will have an opportunity to  
17 make their closing arguments. Again, their statements  
18 and arguments are not evidence and are not instructions  
19 on the law. They are intended only to assist you in  
20 understanding the evidence and the parties' contentions  
21 and what they believe that the evidence has shown and  
22 what they believe your verdict should be.

23 You should answer each question from the  
24 facts as you find them. Do not decide who you think  
25 should win and then answer the questions accordingly.

2 In determining whether any fact has been  
3 proved in this case, you may, unless otherwise  
4 instructed, consider the testimony of all witnesses,  
5 regardless of who may have called them, and all exhibits  
6 received in evidence, regardless of who may have  
7 produced them.

8 I'm going to have the Court Security  
9 Officer pass out to you now a copy of the verdict form  
10 that you will be answering in the jury room. Just to  
11 give you a little overview -- we'll kind of skip to the  
12 end here at the beginning, so that you'll know what  
13 questions you're going to be asked.

14 And I'll go over this in a little bit  
15 more detail with you in these instructions, but first,  
16 you'll notice there are two pages.

17 On the first page, are Questions 1(a) and  
18 1(b) that deal with the issue of infringement, and  
19 you'll see there's -- Question 1(a) deals with  
20 infringement; 1(b) deals with whether or not such  
21 infringement was willful.

22 Then you'll see a place where you are to  
23 answer, for each patent, the '427, the 227, and the  
24 '313, in a column there relating to 1(a) and 1(b). 1(a)  
25 is where you'll answer with regard to infringement, and

3 Now, you may notice in -- in here that  
4 there are the -- on the next page, you'll notice is the  
5 issue dealing with invalidity, and this question asks  
6 whether you find -- whether -- did Apple prove by clear  
7 and convincing evidence that all of the infringed  
8 claims, if any, of each of Mirror Worlds' patents  
9 identified below are invalid. And, again, there's a  
10 space for you to answer yes or no in response to that  
11 question.

12 And then the third question deals with  
13 damages, and there's a conditional question in there, or  
14 instruction in there; but then you would answer the  
15 third question as to the amount of damages for each  
16 patent, if any.

17 So that's just an overview to give you an  
18 idea of what questions you're going to be answering.

19 Now let me go back and give you some  
20 further instructions.

21 First, regarding how to consider witness  
22 testimony. Again, you, the jurors, are the sole judges  
23 of the credibility of all witnesses and the weight and  
24 effect of all evidence.

25 By the Court allowing testimony or other

2 other side, the Court did not indicate any opinion as to  
3 the weight or effect of such evidence.

4                 When the Court did sustain an objection  
5 to a question addressed to a witness, you must disregard  
6 the question entirely and may draw no inference from the  
7 wording of it or speculate as to what the witness would  
8 have testified to, if he or she had been permitted to  
9 answer the question.

10                 At times during the trial, it was  
11 necessary for the Court to talk with the attorneys here  
12 at the bench out of your hearing or by calling a recess.

13                 We met because often during the trial,  
14 something comes up that does not involve the jury. You  
15 should not speculate on what was discussed during such  
16 times.

17                 In determining the weight to give to the  
18 testimony of a witness, you should ask yourself whether  
19 there was evidence tending to prove that the witness  
20 testified falsely concerning some important fact or  
21 whether there was evidence that at some other time the  
22 witness said or did something or failed to say or do  
23 something that was different from the testimony the  
24 witness gave before you during the trial.

25                 You should keep in mind, of course, that

2 that the witness was not telling the truth as he or she  
3 remembers it, because people sometimes forget some  
4 things or remember other things inaccurately.

5 So if a witness has made a misstatement,  
6 you need to consider whether the misstatement was an  
7 intentional falsehood or simply an innocent lapse of  
8 memory. And the significance of that may depend on  
9 whether it has to do with an important fact or only with  
10 some unimportant detail.

11 Now, with regard to examining the  
12 evidence. Certain testimony in this case has been  
13 presented to you through a deposition. I've gone over  
14 with you what a deposition is, and you should consider  
15 deposition testimony just as you would testimony here in  
16 court.

17 While you should consider only the  
18 evidence in the case, you are permitted to draw  
19 reasonable inferences from the testimony and exhibits as  
20 you feel are justified in light of common experience.

21 In other words, you may make deductions  
22 and reach conclusions that reason and common sense lead  
23 you to draw from the facts that have been established by  
24 the testimony and evidence in this case.

25 Unless you are instructed otherwise, the

2 any fact even if a greater number of witnesses may have  
3 testified to the contrary, if, after considering all the  
4 other evidence, you believe that single witness.

5 Now, there are two types of evidence that  
6 you may consider in properly finding the truth as to the  
7 facts. One is direct evidence, such as the testimony of  
8 an eyewitness. The other is indirect or circumstantial  
9 evidence; that is, the proof of a chain of circumstances  
10 that indicates the existence or non-existence of certain  
11 other facts.

12 As a general rule, the law makes no  
13 distinction between direct and circumstantial evidence,  
14 but simply requires that you find the facts from a  
15 preponderance of all the evidence, including both direct  
16 and circumstantial.

17 Now, you've also heard expert witnesses  
18 testify in this case. Sometimes when the knowledge of a  
19 technical subject matter may be helpful to the jury, a  
20 person who has special training or experience in that  
21 technical field is called as an expert witness and is  
22 permitted to state his or her opinion on those technical  
23 matters.

24 However, you are not required to accept  
25 that opinion. As with any other witness, it is up to

2 deciding whether to accept or rely upon the opinion of  
3 an expert witness, you may consider any bias of the  
4 witness, including any bias you may infer from evidence  
5 that the expert witness has been or will be paid for  
6 reviewing the case and testifying, or from evidence that  
7 he or she testifies regularly as an expert witness and  
8 that income from such testimony represents a significant  
9 portion of the expert's income.

10 Now, let me go -- move from witnesses'  
11 testimony to the contentions of the parties. And the  
12 contentions in this case have narrowed somewhat from  
13 when the case started.

14 Sometimes during the course of the trial,  
15 the issues and the disputes get narrowed. That has  
16 happened in this case, and there are two issues that are  
17 no longer in the case.

18 The first is whether or not Mirror Worlds  
19 infringes Apple's patent. That's no longer in the case.  
20 The other issue is whether Apple's iPhone, iPad, and  
21 iPod infringe Mirror Worlds' patents. That's also no  
22 longer in the case.

23 So that will not be argued to you, and  
24 you won't have to decide anything about that.

25 But what is in the case and that you will

2 Mirror Worlds contends that Apple has in  
3 the past and/or continues to make, use, offer to sell,  
4 sell, or import products or methods that infringe at  
5 least one of Claims 13 and 22 of the '227 patent; and  
6 Claims 1, 8, 16, 18, 25 of the '427 patent; and  
7 Claims 1, 2, 3, and 9 and 11 of the '313 patent.

8 And the attorneys all have more to say  
9 about that in their closing arguments and help you focus  
10 in on those claims that are in the case.

11 Apple denies the allegations that it has  
12 infringed any claim of the Mirror Worlds patents.

13 Apple also contends that the '227 patent,  
14 the '313 patent, and the '427 patent are invalid,  
15 because they are not new over the prior art; they would  
16 have been obvious in view of the prior art; and they  
17 fail to satisfy the written description and enablement  
18 requirements.

19 Your job is to decide whether the  
20 asserted claims of the '227, '313 patent, and '427  
21 patent have been infringed. That's Question No. 1(a).  
22 And whether any of those -- if you do find infringement,  
23 whether any of that is -- was willful. And that's in  
24 Question 1(b).

25 And then to decide whether any of the

2 That's in Question 2. And invalidity is a defense to  
3 infringement.

4 Therefore, even though the United States  
5 Patent & Trademark Office or the Patent Office Examiner  
6 has allowed claims to the three patents, you, the jury,  
7 must decide whether the claims of the patent are  
8 invalid.

9 If you decide that any claim of a patent  
10 has been infringed and that claim is not invalid, then  
11 you will need to decide any money damages to be awarded  
12 to Mirror Worlds as compensation for the infringement.

13 And that's Question 3.

14 So really, there are three groups of  
15 questions that you will be deciding.

16 Now, with regard to burdens of proof.

17 There are different burdens of proof, as I told you in  
18 the beginning instructions, that apply to each of those  
19 questions, and they are set out in the questions.

20 There are two burdens of proof:

21 Preponderance of the evidence and the clear and  
22 convincing evidence standard.

23 Preponderance of the evidence means that  
24 the evidence persuades you that a claim is more likely  
25 true than not true.

2 standard means the evidence produces in your mind a firm  
3 belief or conviction as to the matter at issue. The  
4 clear and convincing evidence standard requires greater  
5 proof than is necessary for the preponderance of the  
6 evidence standard.

7 Mirror Worlds has the burden of proving  
8 infringement by a preponderance of the evidence. In  
9 determining whether any fact has been proved by a  
10 preponderance of the evidence, you may, unless otherwise  
11 instructed, consider the stipulations or testimony of  
12 all witnesses, regardless of who may have called them,  
13 and all exhibits received in evidence, regardless of who  
14 may have produced them.

15 If the proof establishes that all  
16 essential parts of Mirror Worlds' infringement claim are  
17 more likely true than not true, then you should find for  
18 Mirror Worlds as to that claim.

19 If you find that Apple infringed one or  
20 more of the asserted claims, then that party has the  
21 burden of proving its additional contention that the  
22 infringement was willful by clear and convincing  
23 evidence.

24 The clear and convincing evidence  
25 standard requires a greater degree of proof than is

2 standard.

3                   The proof must establish a firm belief or  
4 conviction in your mind that infringement was willful  
5 for you to find for Mirror Worlds as to the infringement  
6 issue.

7                   So, again, if you look back at your  
8 verdict form, Questions 1(a) and 1(b) deal with that.  
9 And as you'll notice, 1(a) has the preponderance of the  
10 evidence standard in it. That's with regard to  
11 infringement. And 1(b) has the clear and convincing  
12 evidence standard in it, and that is in -- related to  
13 whether such infringement was willful.

14                  So you have those two different burdens  
15 of proof on those two -- two questions in Question  
16 No. 1.

17                  As issued United States patents, Mirror  
18 Worlds' patents are presumed to be valid. Apple has the  
19 burden of overcoming that presumption and proving  
20 invalidity of the Mirror Worlds patents by the clear and  
21 convincing evidence standard.

22                  And if you'll look over at Question  
23 No. 2, you'll notice that it asks: Did Apple prove by  
24 clear and convincing evidence that all of the infringed  
25 claims of each of the patents as stated below are

2 So, again, that's the clear and  
3 convincing evidence standard as related to invalidity.

4 And, again, in determining whether any  
5 fact has been proved by clear and convincing evidence,  
6 you may, unless otherwise instructed, consider any  
7 stipulations, the testimony of all witnesses and all  
8 exhibits introduced into evidence, regardless of who may  
9 have produced them or called them.

10 The clear and convincing evidence  
11 standard, again, requires a greater degree of proof than  
12 is necessary for the preponderance of the evidence  
13 standard.

14 The proof must establish a firm belief or  
15 conviction in your mind that the invalidity claims are  
16 correct in order for you to find that the Mirror Worlds  
17 patents are invalid.

18 All right. That covers the questions and  
19 the burdens of proof. You will notice the damage issue,  
20 No. 3; again, that's the preponderance of the evidence  
21 standard.

22 Now let me visit with you about the  
23 patents and the patent claims.

24 At the beginning of the trial, I gave you  
25 some general information about patents and the patent

2 to this case. I will now give you more detailed  
3 instructions about the patent laws that specifically  
4 relate to this case.

5 If you would like to review my  
6 instructions at any time during your deliberations, they  
7 will be available for you in the jury room when you are  
8 deliberating your verdict.

9 The claims of a patent are the numbered  
10 sentences at the ends of the patent. The claims  
11 describe the invention made by the inventor and describe  
12 what the patent owner owns and what the patent owner may  
13 prevent others from doing.

14 Claims may describe methods, products,  
15 such as machines or chemical compounds, or processes for  
16 making or using a product. In this case, Mirror Worlds  
17 has asserted product and method claims from the Mirror  
18 Worlds patents.

19 Claims are usually divided into parts or  
20 steps called limitations or elements. For example, a  
21 claim that covers the invention of a table may recite  
22 the table top, four legs, and the glue that secures the  
23 legs to the tabletop. In this example, the tabletop,  
24 legs, and glue is each a separate limitation of the  
25 claim.

2 In deciding whether or not an accused  
3 method or product infringes the patent, the first step  
4 is to understand the meaning of the words used in the  
patent.

5 Again, it is my job as Judge to determine  
6 what the patent claims mean and to instruct you about  
7 that meaning. You must accept the meanings I give you  
8 and use those meanings when you decide whether or not  
9 the patent claims are infringed and whether or not they  
10 are invalid.

11 I have interpreted the meaning of some of  
12 the language in the patent claims involved in this case.  
13 My interpretation of those claims appears in Appendix A  
14 to the charge.

15 The claim language I have not interpreted  
16 for you in Appendix A is to be given its ordinary and  
17 accustomed meaning as understood by one of ordinary  
18 skill in the art.

19 Now, with regard to what's called  
20 comprising claims. The beginning or preamble of certain  
21 claims uses the word comprising. Comprising means  
22 including or containing but not limited to; that is, if  
23 you decide that an accused product or the use of an  
24 accused product includes all of the requirements or  
25 steps in that claim, the claim is infringed.

2 includes components or steps in addition to those  
3 requirements.

4 For example, a claim to a table  
5 comprising a table top, legs, and glue would be  
6 infringed by a table that includes a table top, legs,  
7 and glue, even if the table also includes wheels on each  
8 of the table legs.

9 Now, there are two types of claims:  
10 Independent claims and dependent claims.

11 A dependent claim refers to another claim  
12 called a base claim, while an independent claim does not  
13 refer to any other claim. The base claim from which a  
14 dependent claim depends may be an independent -- an  
15 independent claim or another dependent claim.

16 The dependent claim includes or  
17 incorporates each of the requirements of the base claim  
18 and one or more additional requirements.

19 In order to find infringement of each of  
20 the dependent claims of the patents-in-suit, you must  
21 first determine whether the base claim from which it  
22 depends has been infringed. If you decide that the base  
23 claim has been infringed, then the dependent claim  
24 cannot have been infringed.

25 If you decide that the base claim has

2 whether each additional requirement of the dependent  
3 claim has also been included in the accused product or  
4 use of the accused product.

5 If each additional requirement has been  
6 included, then the dependent claim is said to have been  
7 infringed.

8 Mirror Worlds must prove by a  
9 preponderance of the evidence that a patent claim has  
10 been infringed.

11 Now, a patent claim may be directly  
12 infringed in two ways: A claim may be literally  
13 infringed, or it may be infringed under what's called  
14 the Doctrine of Equivalents.

15 I will now instruct you on rules you must  
16 follow to determine whether Mirror Worlds has proven  
17 that Apple has infringed one or more claims of its  
18 patents.

19 First, direct infringement or what's  
20 called literal infringement. You must decide whether  
21 Apple has made, used, sold, or offered for sale within  
22 the United States or imported into the United States a  
23 product or method covered by one or more of the  
24 Claims 13 and 22 of the '227; Claims 1, 8, 16, 18, or 25  
25 of the '427; and Claims 1, 2, 3, 9, or 11 of the '313

2 You must compare each claim to the  
3 Apple's product or method to determine whether every  
4 requirement of the claim is included in the accused  
5 product or method.

6 To prove literal infringement, Mirror  
7 Worlds must prove by a preponderance of the evidence  
8 that Apple's accused product or use of an accused  
9 product includes every requirement or step in a single  
10 claim of its patents-in-suit.

11 If an accused product or use of an  
12 accused product omits any requirement or step recited in  
13 a claim of Mirror Worlds' patents, Apple does not  
14 infringe that claim.

15 In making your determination, you must  
16 consider each claim separately and each accused product  
17 separately.

18 For literal infringement, Mirror Worlds  
19 is not required to prove that Apple intended to infringe  
20 or knew of the patent.

21 Now, direct infringement under the  
22 Doctrine of Equivalents. Mirror Worlds also alleges  
23 that even if there is no literal infringement, then the  
24 asserted claims of the Mirror Worlds patents have been  
25 infringed under what's called the Doctrine of

2 To prevail on its allegation of  
3 infringement, Mirror Worlds must prove by a  
4 preponderance of the evidence that the accused product  
5 or use of the accused product contains requirements  
6 identical or equivalent to each claim requirement or  
7 step of the patented invention.

8 You must proceed on a  
9 requirement-by-requirement or step-by-step basis.

10 Mirror Worlds must establish that each requirement in  
11 the claim is present in the accused product either  
12 literally or under the Doctrine of Equivalents.

13 A claim requirement is present in an  
14 accused product or method under the Doctrine of  
15 Equivalents if the difference between the claim  
16 requirement and a corresponding aspect of the accused  
17 product or method is insubstantial.

18 In making this determination, you may  
19 consider whether the corresponding aspect or step  
20 performs substantially the same function in  
21 substantially the same way to achieve substantially the  
22 same result as the requirement in the claim.

23 You may also consider whether people of  
24 ordinary skill in the art believe that the corresponding  
25 aspect or step of the accused product or method and the

2 interchangeable at the time of the alleged infringement.

3                 The proper time for evaluating  
4     equivalency and thus knowledge of interchangeability  
5     between requirements is the time of the infringement,  
6     not the time the patent was issued.

7                 Under the Doctrine of Equivalents, those  
8     of ordinary skill in the art do not have to know of the  
9     equivalent when the patent application was filed or when  
10    the patent was issued. Thus, the inventor need not have  
11    foreseen and the patent need not describe all potential  
12    equivalents to the invention covered by the claims.

13                 Also, changes in technique or  
14    improvements made possible by technology developed after  
15    the patent application is filed, may still be equivalent  
16    for the purposes of the Doctrine of Equivalents.

17                 Now, that covers direct infringement and  
18    infringement under the Doctrine of Equivalents.

19                 The next is willful infringement. In  
20    this case, Mirror Worlds contends that not only did  
21    Apple infringe its patents but that it did so willfully.

22                 If you find that Apple has infringed one  
23    or more claims of the Mirror Worlds patents, then you  
24    must determine whether that infringement was willful.

25                 Again, that's Question 1(b).

2 clear and convincing evidence, which is the higher  
3 burden of proof than for infringement.

4 The issue of willful infringement relates  
5 to the amount of damages Mirror Worlds is entitled to  
6 recover in this lawsuit. If you decide that Apple  
7 willfully infringed one or more claims of Mirror Worlds'  
8 patents, then it will be my job to decide whether or not  
9 to award increased damages.

10 You should not take this factor into  
11 account in assessing damages, if any, to be awarded to  
12 Mirror Worlds. In other words, if you make a finding of  
13 willful infringement, that's something I, as the Judge,  
14 will take up later. And you need not be concerned about  
15 it.

16 To prove willful infringement, Mirror  
17 Worlds must persuade you with clear and convincing  
18 evidence that before March 14, 2008, Apple acted with  
19 reckless disregard of the claims of the Mirror Worlds  
20 patents.

21 Recklessness regard (sic) requires two  
22 parts. The first concerns Apple's conduct, and the  
23 second concerns Apple's state of mind.

24 When considering the -- Apple's conduct,  
25 you must decide whether Mirror Worlds has -- whether

2 probable that Apple's conduct was reckless. That is,  
3 that Apple proceeded with the allegedly infringing  
4 conduct with knowledge of the patent, and in the face  
5 and of an objectively high likelihood that it was  
6 infringing the claims of a valid and enforceable patent.

Because this is an objective issue, the state of mind of Apple is not relevant. Legitimate or credible defenses to infringement, even if ultimately not successful, demonstrate a lack of recklessness.

11                           If you conclude that Mirror Worlds has  
12 proven that Apple's conduct was reckless, then you need  
13 to consider the second part of the test.

14 You must determine whether Mirror Worlds  
15 proved it is highly probable that the unjustifiably high  
16 risk of infringement was known or so obvious that it  
17 should have been known to Apple.

22 (1) Whether Apple acted in a manner  
23 consistent with the standards of commerce for its  
24 industry;

25 (2) Whether Apple intentionally copied,

2 Mirror Worlds' patents as distinguished from trying to  
3 design around the patent by designing a product or  
4 method that Apple believed did not infringe those  
5 claims;

6 And (3) Whether Apple had a reasonable  
7 basis to believe that it did not infringe or had a  
8 reasonable defense to infringement such as that -- such  
9 as that the patent was invalid.

10 All right. That deals with infringement  
11 and willful infringement. Next is validity or  
12 invalidity.

13 Patent invalidity is a defense to patent  
14 infringement. Even though the Patent Office Examiner  
15 has allowed the claims of a patent, you have the  
16 ultimate responsibility for deciding whether the claims  
17 of the patent are valid.

18 The issuance of a patent by the Patent  
19 Office provides a presumption that the patent is valid.  
20 From the issuance of the patent, it is presumed that a  
21 claimed invention -- excuse me.

22 From the issuance of the patent, it is  
23 presumed that a claimed invention is novel, useful, not  
24 obvious, and satisfies the other legal requirements for  
25 a valid U.S. patent.

2 This presumption of validity, however, is  
3 a rule of evidence that places the burden upon the party  
4 disputing the validity of a patented claim to come up  
5 with clear and convincing evidence that the Patent  
6 Office acted erroneously in issuing the patent.

6                   Each claim of a patent is presumed valid  
7 independently of the validity of the other claims.

8                   Accordingly, the party challenging the  
9 validity bears the burden of proving invalidity of each  
10 claim with facts supported by clear and convincing  
11 evidence.

12                  In making your determination as to  
13 whether a patent claim is valid or invalid, you must  
14 consider each patent and each of the claims of the  
15 patent separately and individually as you did when you  
16 considered whether the claim was infringed or not.

17                  If the evidence is clear and convincing  
18 that a claim in a given patent fails to meet the  
19 essential requirements of the patent laws, then that  
20 patent is invalid.

21                  However, if you find that one or more  
22 claims of a patent fail to meet the essential  
23 requirement of the patents, it does not necessarily mean  
24 that the remaining claims of that patent are also  
25 deficient or invalid.

2       claims of one patent are invalid, that does not  
3       necessarily mean that any claim of any other patent is  
4       also invalid.

5                          The presumption of validity remains  
6       intact and the burden of proof remains on the party  
7       challenging the patent's validity throughout this  
8       litigation.

9                          In other words, the clear and convincing  
10      evidence standard does not weaken and the burden of  
11      proof never shifts to the patent owner to prove that its  
12      patents are valid.

13                         I will now instruct you on the invalidity  
14      issues you should consider. As you consider these  
15      issues, remember that Apple bears the burden of proving  
16      with clear and convincing evidence that the claims are  
17      invalid.

18                         The first invalidity issue of the defense  
19      is what's called anticipation. That means publicly used  
20      or known or previously published.

21                         Apple contends that the asserted claims  
22      of the Mirror Worlds' patents are invalid because the  
23      claimed invention was not new.

24                         For a claim to be invalid because it was  
25      not new, all of the requirements must have existed in a

2 invention or must have been described in a single  
3 previous publication or a patent that predates the  
4 claimed invention.

5 In patent law, such previous device,  
6 method, publication, or patent is called a prior art  
7 reference. If a patent claim is not new, we say it is  
8 anticipated by a prior art reference. Apple must prove  
9 with clear and convincing evidence that the claim was  
10 anticipated.

11 The disclosure in the prior art reference  
12 does not have to be in the same words as the claim, but  
13 all of the requirements of the claim must be there,  
14 either stated or necessarily implied, so that someone of  
15 ordinary skill in the field of the computers, looking at  
16 that one prior art reference, would be able to make and  
17 use at least one embodiment of the claimed invention.

18 Anticipation also occurs when the claimed  
19 invention inherently, necessarily, that is, results from  
20 practice of what is disclosed within the written  
21 reference, even if the inherent disclosure was  
22 unrecognized or unappreciated by one of ordinary skill  
23 in the field of the invention.

24 Generally, an alleged infringer can show  
25 that a patent owner's patent was not new:

2 publicly known or publicly used by others in the United

3 States before the date of the invention;

4 Or if the claimed invention was already

5 patented or described in a printed publication anywhere

6 in the world before the date of the invention;

7 To qualify as a prior art reference, a

8 printed publication must be at least reasonably

9 accessible to those interested in the field, even if it

10 is difficult to find;

11 An electronic publication, including an

12 online or internet publication, is a printed publication

13 if at least reasonably accessible to those interested in

14 the field, even if it was difficult to find;

15 Or if the claimed invention was already

16 described in another published U.S. Patent application

17 or issued U.S. patent that was based on a patent

18 application filed before the date of invention of the

19 asserted patent.

20 If a patent claim is not new as explained

21 above, you must find that claim invalid.

22 Now, anticipation by statutory bars.

23 Apple may prove that the patents-in-suit

24 are invalid by showing with clear and convincing

25 evidence that each such claim failed to meet one of

2 provisions are called statutory bar.

3                   For a patent claim to be invalid because  
4 of a statutory bar, all of its requirements must have  
5 been present in one prior art reference dated more than  
6 one year before the effective filing date of the patent  
7 application.

8                   Here is a list of ways Apple can show  
9 that the patent application was not timely filed, that  
10 is, filed one year -- within one year of the occurrence  
11 of any of the following events:

12                  First, if the claimed invention was  
13 already patented or described in a printed publication  
14 anywhere in the world more than one year before the  
15 effective filing date of the patent application.

16                  A reference is a printed publication if  
17 it is reasonably accessible to those interested in the  
18 field, even if it is difficult to find.

19                  And again, an electronic publication,  
20 including an online or internet publication is a printed  
21 publication if it is at least reasonably accessible to  
22 those interested in the field even it is difficult to  
23 find;

24                  Now, the second way is if the claimed  
25 invention was already being publicly or commercially

2 effective filing date of the patent application and that  
3 use was not primarily an experimental use controlled by  
4 the inventor to test whether the invention worked for  
5 its intended purpose.

6 For a claim to be invalid because of  
7 after statutory bar, all of the claimed requirements  
8 must have been either:

9 (1) disclosed in a single prior art  
10 reference;

11 Or (2) implicitly disclosed in a single  
12 prior art reference as viewed by one of ordinary skill  
13 in the field of the invention.

14 The disclosure in a reference does not  
15 have to be in the same words as the claim, but all of  
16 the requirements of the claim must be described in  
17 enough detail or necessarily implied by or inherent in  
18 the reference to enable someone of ordinary skill in the  
19 field of the invention, looking at the reference, to  
20 make and to use at least one embodiment of the claimed  
21 invention disclosed.

22 A prior art reference also invalidates a  
23 patent when the claimed invention necessarily results  
24 from practice of the subject of the prior art reference,  
25 even if the result was unrecognized and unappreciated by

2 If you find a patent claim failed to meet  
3 a statutory bar, then you must find the patent claim  
4 invalid.

5 Next is obviousness.

6 In this case, Apple claims that the  
7 asserted claims of the Mirror Worlds' patents are  
8 invalid as obvious.

9 A patent claim is invalid if the claimed  
10 invention would have been obvious to a person of  
11 ordinary skill in the field of the invention at the time  
12 the patent application was filed.

13 This means that even if all the  
14 requirements of the claim cannot be found in a single  
15 prior art reference that would anticipate the claim or  
16 constitute a statutory bar to that claim, a person of  
17 ordinary skill in the field of the invention who knew  
18 about all the prior art would have nevertheless come up  
19 with the claimed invention.

20 A patent claim composed of several  
21 requirements is not proved obvious merely by  
22 demonstrating that each of its requirements was  
23 independently known in the prior art.

24 Although common sense directs one to look  
25 with care at a patent application that claims as

2 according to their established functions to produce a  
3 predictable result, it can be important to identify a  
4 reason that would have prompted a person of ordinary  
5 skill in the relevant field to combine the requirements  
6 in the way the claimed new invention combines them.

7 This is so, because inventions in most,  
8 if not all instances, rely upon building blocks long  
9 since uncovered. And claimed discoveries, almost of  
10 necessity, will be combinations of what, in some sense,  
11 is already known.

12 Accordingly, you may evaluate whether  
13 there was some teaching, suggestion, or motivation to  
14 arrive at the claimed invention before the time of the  
15 claimed invention, although proof of this is not a  
16 requirement to prove obviousness.

17 Teachings, suggestions, and motivations  
18 may be found in written references, including the prior  
19 art itself; however, teachings, suggestions, and  
20 motivations may also be found within the knowledge of a  
21 person of ordinary skill in the art including inferences  
22 and creating steps that a person of ordinary skill in  
23 the art would employ.

24 Additionally, teachings, suggestions, and  
25 motivations may be found in the nature of the problem

2 known in the field of the invention at the time of and  
3 addressed by the invention.

4 Therefore, in evaluating whether such a  
5 claimed invention would have been obvious, you should  
6 consider a variety of factors:

7 (1) whether Apple has identified a reason  
8 that would have prompted a person of ordinary skill in  
9 the field of the invention to combine the requirements  
10 or combinations from the prior art in the same way as in  
11 the claimed invention.

12 There is no single way to define the line  
13 between true inventiveness on the one hand (which is  
14 patentable) and the application of common sense and  
15 ordinary skill to solve a problem on the other hand  
16 (which is not patentable).

17 For example, market forces or other  
18 design incentives may be what produced a change rather  
19 than true inventiveness.

20 (2) whether the claimed invention applies  
21 a known technique that has been used to improve a  
22 similar device or method in a similar way;

23 (3) whether the claimed invention would  
24 have been obvious to try, meaning that the claimed  
25 innovation was one of relatively small number of

2 expectation of success by those skilled in the art.

3                   But you must be careful not to determine  
4 obviousness using hindsight. Many true inventions can  
5 seem obvious after the fact. You should put yourself in  
6 the position of a person of ordinary skill in the field  
7 of the invention at the time the claimed invention was  
8 made, and you should not consider what is known today or  
9 what is learned from the teaching of the patent.

10                  The ultimate conclusion of whether a  
11 claim is obvious should be based on your determination  
12 of several factual issues:

13                  (1) You must decide the level of ordinary  
14 skill in the field of the invention that someone would  
15 have had at the time the claimed invention was made;

16                  (2) You must decide the scope and content  
17 of the prior art. In determining the scope and content  
18 of the prior art, you must decide whether a reference is  
19 pertinent or analogous or -- to the claimed invention.

20                  Pertinent or analogous prior art includes  
21 prior art in the same field of endeavor as the claimed  
22 invention, regardless of the problems addressed by the  
23 reference and prior art from different fields reasonably  
24 pertinent to the particular problem with which the  
25 claimed invention is concerned.

2 patents and published materials, but includes the  
3 general knowledge that would have been available to one  
4 of ordinary skill in the field of the invention.

5 (3) You must decide what difference, if  
6 any, existed between the claimed invention and the prior  
7 art.

8 Finally, you should consider any of the  
9 following factors that you find have been shown by the  
10 evidence:

11 (A) Factors tending to show

12 non-obviousness include:

13 (1) commercial success of a product due  
14 to the merits of the claimed invention;

15 (2) a long felt, but unresolved need for  
16 the solution provided by the claimed invention;

17 (3) unsuccessful attempts by others to  
18 find the solution provided by the claimed invention;

19 (4) copying of the claimed invention by  
20 others;

21 (5) unexpected and superior results from  
22 the claimed invention;

23 (6) acceptance by others of the claimed  
24 invention as shown by praise from others in the field of  
25 the invention or from the licensing of the claimed

2 And (7) disclosures in the prior art that  
3 criticize, discredit, or otherwise discourage the  
4 claimed invention and would therefore tend to show that  
5 the invention was not obvious.

6 You may consider the presence of any of  
7 these factors just listed as an indication that the  
8 claimed invention would not have been obvious at the  
9 time the invention was made.

10 Now (B) factors tending to show  
11 obviousness include:

12 (1) independent invention of the claimed  
13 invention by others before or at about the same time as  
14 the named inventor thought of it. And you may consider  
15 the presence of this factor as an indication that the  
16 claimed invention would have been obvious at such time.

17 Although you should consider any evidence  
18 of these factors, the relevance and importance of any of  
19 them to your decision on whether the claimed invention  
20 would have been obvious is up to you.

21 Apple must prove with clear and  
22 convincing evidence that a claimed invention was  
23 obvious. If you find that a claimed invention was  
24 obvious, as explained above, you must find that claim  
25 invalid.

2 Now, with regard to the scope and content  
3 of the prior art, to qualify as prior art relevant to  
4 the patents-in-suit, a reference must be reasonably  
related to the claimed invention of that patent.

5 A reference is reasonably related if it  
6 is in the same field as the claimed invention or is from  
7 another field to which a person of ordinary skill in the  
8 field would look to solve their own problem.

9 Remember that prior art is not limited to  
10 patents and published materials but also includes the  
11 general knowledge that would have been available to one  
12 of ordinary skill in the field of the invention.

13 Now, differences over the prior art.

14 In reaching your conclusion about whether  
15 or not claims of the patents-in-suit would have been  
16 obvious at the time the claimed invention was made, you  
17 should consider any evidence or differences between the  
18 prior art and the claim requirements.

19 Next is level of ordinary skill.

20 Several times in my instructions I have  
21 referred to a person of ordinary skill in the field of  
22 the invention. It is up to you to decide the level of  
23 ordinary skill in the field of the invention.

24 You should consider all of the evidence  
25 introduced at trial in making this decision, including:

2 experience of persons working in the field;

3 (2) the types of problems encountered in  
4 the field;

5 And (3) the sophistication of the  
6 technology.

7 Mirror Worlds contends that the ordinary  
8 skill in the field of invention was someone who had a  
9 bachelor's degree in computer science, computer  
10 engineering, or the equivalent and three to five years  
11 in the field of computer operating systems, or a  
12 postgraduate degree in computer science, computer  
13 engineering, or the equivalent, and one to two years of  
14 experience in the field of computing systems.

15 Apple contends that the level of ordinary  
16 skill in the field in the invention was someone who had  
17 a Ph.D. in computer science or other combination of  
18 education and experience that provided sufficient  
19 confidence in the appropriate aspects of computer  
20 science, such as graphical user interface design and  
21 some knowledge of document processing software design  
22 and development, data structures, operating systems,  
23 backup and archiving systems and client server  
24 computing.

25 Written description.

2 the '227 patent; and Claims 1, 8, 16, 18, and 25 of the  
3 '427 patent; and Claims 1, 2, 3, 9, and 11 of the '313  
4 patent are invalid for failure of the patents to provide  
5 an adequate written description of the claimed  
6 inventions.

7 Apple must prove with clear and  
8 convincing evidence that these claims lack an adequate  
9 written description.

10 The written description requirement is  
11 satisfied if a person of ordinary skill in the field,  
12 reading the patent application as originally filed,  
13 would recognize that the patent application described  
14 the invention of these claims, even though the  
15 description might not use the exact words found in the  
16 claim.

17 The written description is adequate if it  
18 shows that the inventor was in possession of each claim  
19 of the invention at the time the application for the  
20 patent was filed, even though the claim may have been  
21 changed or new claims added during the prosecution of  
22 the application.

23 It is not necessary that each and every  
24 aspect of the claim be explicitly discussed, as long as  
25 a person of ordinary skill would understand that any

2 application as originally filed.

3                 If you find that one or more of the  
4 claims challenged by Apple lack an adequate written  
5 description, you must find each claim invalid -- each  
6 such claim invalid.

7                 Next is enablement.

8                 Apple contends that Claims 13 and 22 of  
9 the '227 patent; and Claims 1, 8, 16, 18, and 25 of the  
10 '427 patent; and Claims 1, 2, 3, 9, and 11 of the '313  
11 patent are invalid because the patents do not disclose  
12 sufficient information to enable one skilled in the  
13 field of the invention, at the time the application was  
14 filed or its effective filing date, to make and use the  
15 claimed invention.

16                 This requirement is known as the  
17 enablement requirement. If a patent claim is not  
18 enabled, it is invalid. Each claim must be analyzed for  
19 compliance with the enablement requirement, and Apple  
20 must prove with clear and convincing evidence that the  
21 claim was not enabled.

22                 In considering whether a patent claim  
23 satisfies the enablement requirement, you must keep in  
24 mind that patents are written for persons of skill in  
25 the field of the invention.

2 information that skilled persons would be likely to know  
3 or could obtain.

4 Apple bears the burden of establishing  
5 lack of enablement by proving with clear and convincing  
6 evidence that a person skilled in the art, upon reading  
7 the patent document, would not be able to make the  
8 invention work without undue experimentation.

9 The fact that some experimentation may be  
10 required for a skilled person to make or use the claimed  
11 invention does not mean that a patent's written  
12 description fails to meet the enablement requirement.

13 Factors you may consider in determining  
14 whether making the invention would require undue  
15 experimentation include:

- 16 (1) the quantity of experimentation  
17 necessary;
- 18 (2) the amount of direction or guidance  
19 disclosed in the patent;
- 20 (3) presence or absence of working  
21 examples of the patent;
- 22 (4) nature of the invention;
- 23 (5) state of the prior art;
- 24 (6) relative skill of those in the art;
- 25 (7) predictability of the art;

2 And (8) the breadth of the claim  
3 If you find that one or more of these  
4 claims did not comply with the enablement requirement,  
5 you must find each such claim invalid.

6 That concludes the invalidity  
7 instruction.

8 Finally are the damage instructions,  
9 generally speaking.

10 If you find that Apple has infringed one  
11 or more valid claims of the Mirror Worlds' patents, you  
12 must determine the amount of damages to which Mirror  
13 Worlds is entitled.

14 Each of these determinations must be  
15 determined separately and individually, as you did when  
16 you considered whether the patents were infringed or  
17 invalid.

18 By instructing you on damages, I do not  
19 suggest that one or the other party should prevail on  
20 the issues of infringement or invalidity.

21 These instructions are provided to guide  
22 you on the calculation of damages in the event you find  
23 infringement of a valid patent and thus must address the  
24 damage issue.

25 The amount of damages must be adequate to  
compensate Mirror Worlds for the infringement, but in no

3 At the same time, your damages  
4 determination must not include additional sums to punish  
5 either Apple or to set an example. You may award  
6 compensatory damages only for the loss that Mirror  
7 Worlds proves was more likely than not caused by Apple's  
8 infringement.

9 Now, with regards to the burden of proof,  
10 and again, the standard is preponderance of the evidence  
11 with regard to damages.

12 Mirror Worlds must prove the amount of  
13 damages by the preponderance of the evidence standard.

14 It must prove the amount of damages with  
15 reasonable certainty but need not prove the amount of  
16 damages with mathematical precision.

17 However, Mirror Worlds is not entitled to  
18 damages that are remote or speculative.

19 Now, with regard to when damages begin,  
20 the amount of damages Mirror Worlds can recover is  
21 limited to those acts of infringement that occurred  
22 after Mirror Worlds gave Apple notice that it infringed  
23 the patent.

24 Notice of infringement can be actual or  
25 constructive, and I'll explain in a moment what that

2 Actual notice means that Mirror Worlds  
3 communicated to Apple a specific charge of infringement  
4 of the patent by the accused products. This notice is  
5 effective as of the date given.

6 The filing of a complaint or infringement  
7 counterclaim qualifies as -- or excuse me. The filing  
8 of a complaint qualifies as actual notice.

9 Mirror Worlds filed a complaint against  
10 Apple on March 14th, 2008, and bears the burden of  
11 establishing it is more probable than not that it  
12 notified Apple of the alleged infringement on an earlier  
13 date.

14 Constructive notice means that Mirror  
15 Worlds complied with the marking requirement of the  
16 patent law.

17 Marking means that substantially all of  
18 the products made, offered for sale, or sold under the  
19 patent are marked to display the word patent or the  
20 abbreviation pat, P-A-T, together with the number of the  
21 patent.

22 Mirror Worlds has the burden of  
23 establishing substantial compliance with the marking  
24 requirement. To do so, Mirror Worlds must show it is  
25 more probable than not that substantially all the

2 product (sic) were marked and that Mirror Worlds made  
3 reasonable efforts to ensure that its licensees who  
4 made, offered for sale, or sold the products under the  
5 patent marked substantially all of their products.

6 Your job is to calculate damages from the  
7 date that Apple received either actual or constructive  
8 notice, whichever was first. You should not award  
9 damages for any infringement occurring before Apple  
10 first received either actual or constructive notice.

11 Now, reasonable royalty.

12 A royalty is a payment made to a patent  
13 holder in exchange for the rights to make, use, or sell  
14 the claimed invention.

15 A reasonable royalty is the patent -- is  
16 the payment that would have resulted from a negotiation  
17 between a patent holder and Apple taking place just  
18 better the time when the infringement began.

19 It may be a running, lump sum, or  
20 combination of the two. It may be a running royalty,  
21 lump sum, or a combination of the two.

22 In considering the nature of this  
23 negotiation, the focus is on what the expectations of  
24 Mirror Worlds and Apple would have been had they entered  
25 into an agreement at the time and acted reasonably in

2 However, you must assume that both  
3 parties believed the patent was valid and infringed.  
4 In addition, you must assume that Mirror Worlds and  
5 Apple were willing to enter into an agreement.

6 Your role is to determine what that  
7 agreement would have been. The test for damages is what  
8 royalty would have resulted from the hypothetical  
9 negotiations and not simply what either party would have  
10 preferred.

11 In determining royalty that would have  
12 resulted from the hypothetical negotiation, you may  
13 consider real world facts, including the following to  
14 the extent they are helpful to you:

15 (1) licenses or offers to license the  
16 patent at issue in this case;

17 (2) licenses involving comparable  
18 patents;

19 (3) licensing history of the parties;

20 (4) licensing practices in the relevant  
21 industry;

22 (5) whether Mirror Worlds had an  
23 established policy of refusing to license the patent at  
24 issue;

25 (6) the relationship between Mirror

2 competitors;

3 (7) the significance of the patented

4 technology in promoting sales of the Apple products and  
5 earning it profit;

6 (8) alternatives to the patented

7 technology and advantages provided by the patented  
8 technology relative to those alternatives;

9 (9) the portion of Apple's profits that

10 should be credited to the invention by distinguished --

11 as distinguished from non-patented features,

12 improvements, or contributions;

13 And (10) any other economic factor that a

14 normally prudent business person would, under similar

15 circumstances, take into consideration in negotiating

## 16 the hypothetical license.

You must also bear in mind that the

<sup>18</sup> A hypothetical negotiation is deemed to be an arm's-length transaction if it is conducted between two parties who are not closely related.

19 transaction and any prior royalty arrangements between

20 the patent owner and a related entity or non-competitor

<sup>21</sup> Is not determinative when analyzing the hypothetical.

22 NEGOTIATION.

21 for your act

You must perform your duties as jurors

2                           The law does not permit you to be  
3 controlled by sympathy, prejudice, or public opinion.

4 All parties expect that you will  
5 carefully and impartially consider all the evidence,  
6 follow the law, as it is now being given to you, and  
7 reach a just verdict, regardless of the consequences.

8 It is your sworn duty as jurors to  
9 discuss the case with one another in an effort to reach  
10 agreement, if you can do so. Each of you must decide  
11 the case for yourself, but only after full consideration  
12 of the evidence with the other members of the jury.

13                           While you are discussing the case, do not  
14 hesitate to re-examine your own opinion and to change  
15 your own mind if you become convinced that you are  
16 wrong.

17                           However, do not give up your honest  
18 beliefs solely because the others think differently or  
19 merely to finish the case.

20 Remember that in a very real way, you are  
21 the judges, judges of the facts. Your only interest is  
22 to seek the truth from the evidence in the case.

23 You should consider and decide the  
24 case -- this case as a dispute between persons of equal  
25 standing in the community, of equal wealth, and holding

2 A corporation is entitled to the same  
3 fair trial as a private individual.

4 All persons, including corporations and  
5 other organizations, stand equal before the law,  
6 regardless of size or who owns them, and are to be  
7 treated as equals.

8 When you retire to the jury room to  
9 deliberate your verdict, you may take this charge with  
10 you, as well as all the exhibits which the Court has  
11 admitted into evidence.

12 You should first select your foreperson  
13 and then begin conducting your deliberations.

14 In this case, since we're going to be  
15 giving this to you around lunchtime, one of your first  
16 decisions should be: Do we want to eat lunch first and  
17 then start deliberating, or do we want to eat lunch and  
18 begin our deliberations during lunch?

19 So that will just be something that  
20 you'll have to decide.

21 If, during your deliberations, you decide  
22 that you'd like to recess, follow all of the  
23 instructions the Court has given to you about your  
24 conduct during the trial.

25 If you wish to take a break, maybe just

2 note to me first to let me know that you're about to  
3 take a break. Then I'll be sure that there aren't a lot  
4 of people in the hallway and that type of thing.

5 After you have reached your unanimous  
6 verdict, your foreperson is to fill in on the form your  
7 answers to the questions and sign and date it. Do not  
8 reveal your answers until such time as you are  
9 discharged, unless otherwise directed by me.

10 You must never disclose to anyone, not  
11 even to me, your numerical division on any questions  
12 during your deliberations.

13 Any notes that you have taken during this  
14 trial are only aids to your memory. If your memory  
15 should differ from your notes, then you should rely on  
16 your memory and not on your notes. Again, the notes are  
17 not evidence.

18 A juror who has not taken any notes  
19 should rely on his or her independent recollection of  
20 the evidence and should not be unduly influenced by the  
21 notes of others, although you can consider the other  
22 jurors' opinions.

23 The point is, notes are not entitled to  
24 any greater weight than the recollection or impression  
25 of the jurors about the testimony.

2 If you want to communicate with me at any  
3 time, please give a written message or question to the  
4 bailiff, who will bring it to me. I will then respond  
5 as promptly as possible either in writing or by having  
6 you brought into the courtroom so that I can address you  
orally.

7 I will always first disclose to the  
8 attorneys your question and my response before I answer  
9 your question.

10 After you have reached a verdict, you are  
11 not required to talk with anyone about the case unless  
12 the Court orders otherwise.

13 At this time, that concludes my  
14 instructions. You will be provided with a copy of  
15 these. In fact, we'll pass a copy out to you as you  
16 leave the courtroom for your break.

17 I'm going to give you a 15-minute break,  
18 allow you to clear your head after listening to me drum  
19 on and on for an hour. And it's about as hard to go  
20 that long as it is to listen to, but thank you for your  
21 attention.

22 So we're going to take a 15-minute  
23 recess, and so we're going to come back at 10:45, at  
24 which time we will begin hearing closing arguments,  
25 which should put us through about 12:15.

2 So with that, please remember my  
3 instructions. Don't discuss this case, even yet among  
4 yourselves. The first time you'll do that will be at  
5 lunchtime today after you've heard the closing  
arguments.

6 So we'll be in recess until 10:45.

7 COURT SECURITY OFFICER: All rise.

8 (Jury out.)

9 (Recess.)

10 COURT SECURITY OFFICER: All rise.

11 (Jury in.)

12 THE COURT: Please be seated.

13 All right. Ladies and Gentlemen of the  
14 Jury, it's now time for closing arguments.

15 And the Court will recognize Mr. Carroll  
16 on behalf of Plaintiffs for purposes of closing  
17 argument.

18 MR. CARROLL: If the Court please, Your  
19 Honor.

20 Ladies and Gentlemen of the Jury, first,  
21 and maybe most importantly, thanks to each and every one  
22 of you for your hard work and your attention on behalf  
23 of everybody on our side, most particularly Dr. G. here  
24 and Jane, who's got her coat on so she won't get cold in  
25 the courtroom.

2 about last Monday -- it seems like a lot longer than  
3 that -- but one of the things I hope I told you, because  
4 I want to remind you of something that's important to  
5 me.

6 We talked a lot about patents being the  
7 creation of the United States Constitution. Well -- and  
8 you probably know this -- but there's another very  
9 important part of the Constitution that you're  
10 fulfilling today, and you have been fulfilling since  
11 September the 7th.

12 And that is what's called the Seventh  
13 Amendment to the Constitution. Here's what that says.  
14 That says that in a civil case, not a criminal case, but  
15 in a civil case where somebody's got a grievance and  
16 needs to go to the courthouse, we are guaranteed, as  
17 American citizens, the right to try our civil grievance  
18 in front of a jury of our peers.

19 Now just think about that. We're the  
20 only country in the world, the only one that has that  
21 right. Great Britain doesn't have it. Canada doesn't  
22 have it. None of our sister countries that we kind of  
23 derive our law from has it.

24 And why is that important?

25 And I think you see it during this case,

2 decisions we have to our neighbors. Because I don't  
3 know if y'all remember, on the -- on the 7th day of  
4 September, when y'all were sitting here and some of you  
5 were sitting out here, I don't know if you remember, but  
6 one lady raised her hand and she says: I just don't  
7 think we ought to do this, because it's too technical.

8                   Do you remember that?

9                   And she said: I just don't know that I  
10 can do it.

11                  Well, I hope you've seen now why it's so  
12 important that we not trust these kinds of decisions to  
13 a bunch of propeller heads. And I use that term to  
14 describe people who are so technical and so special and  
15 so self-absorbed with their own little niche that they  
16 don't have common sense.

17                  Because we believe that -- and we believe  
18 this very strongly on this table -- that we'll take our  
19 chances with people who have common sense every day,  
20 particularly under these facts.

21                  So with that, I want to first remind you  
22 of what I showed you last Monday. And you may remember,  
23 this is what I told you I thought the case would be  
24 about.

25                  Now, let me tell you just a little bit

2 Since we have the burden on infringement,  
3 I'm going to start and I'm going to talk to you for  
4 about 25 minutes. And then I'm going to sit down, and  
5 then the Apple folks will get to do their thing. And  
6 then when they're done, I will get to finish with it.

7 But I want to go through all of the  
8 questions that I posed to you last Monday, starting with  
9 who is David G.?

10 Number two, what did he invent and why?

11 Number three -- and we'll spend some time  
12 on this one -- what was Apple's interest in Dr. G.'s  
13 invention?

14 Number four, how did and how does Apple  
15 use Dr. G's invention?

16 And, number five, what should they pay  
17 for trespassing on his property?

18 And then I'm going to talk to you about  
19 these two points, because that gets back to the common  
20 sense.

21 What did Apple say about Dr. G. and his  
22 invention before we caught them and brought them to this  
23 courthouse and what do they say?

24 And I think when you look at those  
25 distinctions, you will be able to do the first job that

2 decide who to believe. Because once you look at that  
3 contrast, that will tell you everything you need to  
4 know.

5 And you-all saw it as early as the first  
6 day of this trial. Let me tell you what I mean by that.  
7 Let's -- let's put up the first slide, if you would,  
8 James.

9 Now, who is David Gelernter --  
10 Gelernter -- Gelernter (pronouncing) -- excuse me, Doc.  
11 Well, you know who he is. He -- according to The New  
12 York Times, he's the rock star. And I promised Jane I  
13 wouldn't do this, but I'm going to do it anyway. And  
14 that is, I'm going to refer to the comment that The New  
15 York Times made about him where they said -- and I'll  
16 find in it a second -- but where they described him as  
17 looking like a lost graduate student trying to find the  
18 pretzel stand.

19 But then it went on to say that he is not  
20 only the rock star of computing, but that he is a  
21 revolutionary.

22 Now, you've heard that term a lot in this  
23 courtroom. A lot in this courtroom. And he got the  
24 world's attention as early as 1991, when he wrote this  
25 book right here, Mirror Worlds (indicates).

2 And I told you on Monday that if you read  
3 that prologue, you'll know that this man right over  
4 here, who's chewing on his thumb, was looking down the  
5 road 20-plus years ago, and he saw Google.

6 Read that. You'll see what I'm saying.

7 You will look into a computer screen and  
8 see reality. Some part of your world, the town you live  
9 in, the company you work for, your school system, the  
10 city hospital will hang there in a sharp color image,  
abstract but recognizable.

11 You know, this lawsuit is about the power  
12 of ideas, and ideas are powerful. We send children --  
13 not children but young people, young women and young men  
14 overseas every day to stand up in the most dramatic way  
15 for ideas that are important to us.

16 And ideas can be -- can attract  
17 attention, like moths to a flame, and it can be good  
18 attention, and it can be bad attention.

19 And you know from the evidence in this  
20 case that both happened to Dr. G. here because of the  
21 attention he got from a New York Times article that came  
22 out when he previewed the inventions that are at issue  
23 in this lawsuit today.

24 So let's go, James, to paragraph -- I'm  
25 sorry -- to the second slide, the where-is-Scott slide.

2 are three men who are at the very pyramid of Apple:  
3 Steve Jobs -- you've seen him on all the videotapes --  
4 Scott Forstall and Bertrand Serlet; you remember the  
5 French fellow. They were attracted to David's ideas  
6 after Jobs read The New York Times e-mail (sic).

7 Now, let me tell you why I think that's  
8 important.

9 The New York Times e-mail (sic) from  
10 Steve Jobs -- I'm sorry -- the e-mail that was prompted  
11 by The New York Times article came out. Jobs sent it on  
12 the very day he read the article, the very day, and he  
13 sent it to Serlet. He sent it to Bas Ording. And he  
14 sent it to Bereskin. And he sent it to Scott Forstall.  
15 And he sent it to Don Lindsay.

16 And he even put in the subject a line the  
17 name of the article.

18 Now, this e-mail is Plaintiff's Exhibit  
19 No. 193. And I suggest that you -- when you get back in  
20 the jury room, you find it and read it, because attached  
21 to it is that New York Times article.

22 In that New York Times article, when you  
23 lay it down next to the stuff that you've heard Steve  
24 Jobs saying about his products, which came out years  
25 later, is almost identical.

2 excited by this man and his inventions and the publicity  
3 it gives. And the first thing he does is he sends his  
4 top lieutenants, these three guys that were on the --  
5 here we go -- these three guys who are on the screen, he  
6 sends them an instruction.

7 And what does he say?

8 Check out this software ASAP. It may be  
9 something for our future, and we may want to secure a  
10 license ASAP.

11 You remember when Dr. Tribble and I were  
12 talking on Wednesday, I believe it was, and we talked  
13 about the fact that Steve Jobs, in a two-sentence  
14 e-mail, used the term ASAP twice. Twice. And we talked  
15 about the significance of the fact that Jobs said we may  
16 want to secure a license.

17 Now, let me tell you where we are in this  
18 case, because I think it's a very important point for  
19 you-all to consider.

20 On Monday, when we opened this case,  
21 here's what Apple's lawyer said to you he thought would  
22 be important in this case. And I pulled the page right  
23 out of the official transcript.

24 He says: But what the evidence is going  
25 to show in this case is that when Apple did take a

2 with the Apple people -- and there was a suggestion that  
3 there was a meeting where licensing was discussed and  
4 the patents were discussed. That is not true.

5 That's what he said. That is not true.

6 Now, let me tell you where that leads us,  
7 and I think it makes your job, in deciding who to  
8 believe in this case, exceptionally easy, because they  
9 staked out a radical and extreme position by saying  
10 that, well, licensing was never discussed; that the  
11 patents were never talked about.

12 And the very first piece of evidence we  
13 have in this case is the top man at Apple talking about  
14 wanting to secure a license.

15 Now, where in the world do they get off  
16 betting their credibility that all of us in this  
17 courtroom are too dumb to realize that that exhibit in  
18 and of itself makes a lie to what they say?

19 Because that's what it does.

20 Okay. So we know that that set in motion  
21 a number of inquiries. Well, actually one inquiry, and  
22 that was by Mr. Lindsay.

23 And let's go to the book of Lindsay  
24 exhibit. You got that, James?

25 Okay. Let me tell you what this is. We

2 testimony -- you remember that day I was coughing so bad  
3 and trying to read that crazy deposition.

4 Well, we pulled all that stuff out, and  
5 there it is, and that's what this Mr. Lindsay -- you  
6 remember I talked to Dr. Tribble about the fact that  
7 even though the big boss had instructed the underbosses  
8 to check this out, Lindsay was the only one who did what  
9 he was told evidently.

10 And this is what Lindsay said. Lindsay  
11 said, first of all, his initial reaction was he was  
12 surprised, because Jobs had never given him a specific  
13 assignment like that before and never has since.

14 Number two, he said that he thought  
15 Scopeware -- look at his answer down there on Page 119:  
16 Scopeware was clearly new.

17 Now remember, Scopeware is the commercial  
18 embodiment of some of Dr. G.'s patents. Not all but  
19 some.

20 You remember my explanation with Dr. G.  
21 about the Farmer Brown picture and the silo being part  
22 of the property but not all of the property?

23 Scopeware is the silo. It's not the  
24 whole farm, but it's part of it. And this man, Lindsay,  
25 had looked at it, and he had looked at the website, and

2 looked at the website, he knew it was licensed -- I  
3 mean -- excuse me -- patented.

4 And look what else he says. He says that  
5 he looked at the website. And remember, there was  
6 testimony from our side, and nothing from the other  
7 side, that our website -- website had patent references  
8 all over it.

9 And then the last point was, did you  
10 think it was a good idea, and he said he thought it was  
11 an interesting solution to a problem where people needed  
12 to move a lot of information.

13 That's what the man said.

14 Let's go to the next one, please.

15 But what do we know about everybody else?  
16 Well -- James, let's put up this collage.

17 And this is an important collage. These  
18 are all Apple people talking about Dr. G. and his  
19 invention. Let me repeat this. These are all Apple  
20 people talking about Dr. G. and his invention: Don  
21 Lindsay, Mike Morton, Blaine Garst, Toby Paterson -- the  
22 killer feature.

23 Now, you see this Blaine Garst?

24 Go up -- there we go.

25 Blaine Garst was the chief architect on

2 he said: It's depressing to read about patents on this  
3 stuff.

4                   And yet they're going to stand up here in  
5 a little bit and tell you they didn't know anything  
6 about the patents. I guess that's what they're going to  
7 say. They are pretty well stuck with that. Can't back  
8 up now, I wouldn't think.

9                   But see what they do. And when they  
10 stand up there and start spinning the yarn to you about  
11 how they didn't know about any of this stuff, or if they  
12 did, they have now forgotten, remember this.

13                   You see, that's the problem they have.  
14 E-mails don't forget. Paper doesn't tell a lie. It  
15 says what it says.

16                   Now, they get this, and here's what this  
17 poster represents. This poster represents all of these  
18 individual Apple people who were copied on e-mails or  
19 who were involved in the monitoring of Dr. G.'s  
20 products, his website and, therefore, his patents.

21                   And guess what? You saw it in the  
22 courtroom.

23                   Dr. Tribble over there, who they told to  
24 go check out all these e-mail people, he learned and he  
25 told you that nobody remembered a thing. Everybody had

2 You know, when I was a federal prosecutor  
3 in this very courtroom a million years ago, we used to  
4 call that courthouse amnesia. And it's a very, very  
5 common affliction that happens to people who don't want  
6 to have to own up to what they have said before.

7 And that's what you've got in this case. You've got  
8 courthouse amnesia.

9 Now, why is that important? Why is that  
10 important that nobody can remember that day?

11 Well, the reason it's important, in my  
12 opinion, is because it defies your common sense. These  
13 people claim to be the smartest technology company in  
14 the world. And we know that the top of the food chain  
15 was interested in our patent and instructed his top  
16 lieutenants to check it out and get a license.

17 And now nobody can remember anything.

18 Now, you think about that when you use  
19 your common sense in determining who should win this  
20 case, because it means who's telling you the truth.

21 Think about that.

22 One of the things that also you should  
23 think about -- and remember this man, Lindsay, had a  
24 meeting that he called, and you remember Mike Satow, who  
25 came to Tyler from where Judge Davis' daughter got

2 about that meeting and testified that patents were  
3 discussed and licensing was discussed. He testified  
4 about all the expectations they had. And yet one day,  
5 they said we're not interested and how surprised he was.  
6 And Dr. G. testified about that meeting and how  
7 important it was to the little company and how much time  
8 they spent in preparing for that meeting. And then one  
9 day they get this note back: We're not interested.

10 But look what happened after they weren't  
11 interested. Look at this. They continued to monitor  
12 Dr. G. and his website.

13 Now, why is that important?

14 The website's got the patents on them.  
15 And what happened during the period of this monitoring,  
16 after they said they weren't interested? What happened?  
17 They develop the three products that are stealing our  
18 intellectual property.

19 Why do I know that?

20 Let's go to PX110.

21 Now, you heard a lot about this Merlot  
22 meeting. Remember Merlot? Merlot was this top-secret  
23 meeting offsite. You remember Mr. Tiene, who testified  
24 the other day, and said it was a way to get all the  
25 bigshots away from the phone so they could concentrate

2 One of the things we know that was on the  
3 list of what was discussed and suggested was -- look at  
4 that -- Yale professor, David Gelernter.

5 And what is he bringing to the table?

6 New ways of finding information.

7 That is the very meeting where they  
8 finalized what they were going to do about one of the  
9 important use of -- or products that includes the  
10 accused features.

11 That was one of the big cats. Remember  
12 the big cats, Tiger, Leopard, and Snow Leopard. That  
13 was one of the big-cat meetings.

14 So what sense does it make, when in just  
15 a little bit, the guy from Apple is going to stand up  
16 here and tell you that we weren't interested in Dr. G.  
17 His stuff wasn't any -- wouldn't work in our system.

18 And, by the way, it was on old news.

19 Now, just think if any of that makes  
20 sense, when you look at this timeline.

21 When you look at this timeline, why were  
22 they scoping out his Scopeware, if they really and truly  
23 weren't interested?

24 And by the way, you know what happens  
25 right on the other side of this?

2 look into it; it might be worth a look.

3 So think of that when you're listening to  
4 Apple tell you why, number one, what we did was not new;  
5 and, number two, that whatever they did was not new.

6 Let me tell what you I mean by that.

7 THE COURT: Mr. Carroll, you didn't ask  
8 for any warnings, but you have used 25 minutes.

9 MR. CARROLL: Thank you, Your Honor. I'm  
10 going to use five more, if the Court please.

11 I'm grateful for that, Your Honor.

12 But let me tell you -- I'm going to go  
13 through one more thing, and then I'm going to go through  
14 the verdict form.

15 James, would you pull up the slide that  
16 says: To the world?

17 Can you find that one?

18 There we go. Let's lift that out.

19 Now, I want you to remember this when  
20 Apple's talking to you. You remember one of the things  
21 that's plain, Jobs never bothered to come to Tyler.

22 Now, Dr. Tribble says he had more  
23 important stuff to do, and I suspect he does. But you  
24 know what? We all teach our children that whatever  
25 we're doing better be the most important thing we do, or

2 what we all got taught.

3 So we know that the level of importance  
4 that Apple has attached to this lawsuit. Because it's  
5 important to us, we're here; Mike Satow, our CEO, who  
6 used to be the CEO, he came down here. And we didn't  
7 even have to pay him.

8 But Mr. Jobs isn't here. Mr. Serlet is  
9 not here; the other sub-boss is not here. And what we  
10 know, I think, is the reason that Steve Jobs is not  
11 here -- and hear me out on this and test it and see if  
12 this makes sense to you.

13 You remember all of the videos you saw  
14 from Jobs was Jobs bragging about how new and  
15 revolutionary the products we have sued are. You  
16 remember that. And all the clapping and the cheering  
17 and the hoorah-ing and strutting around in his black  
18 sweater.

19 Now, in Court, they're spinning a  
20 different tale. They brought all of these folks who are  
21 still out there -- or most of them are still out there.  
22 And none of them were on the e-mail string.

23 Well, Mr. Tiene was. And they sat up  
24 here and said, no, none of this stuff is new; we've been  
25 doing it for years.

2 sat on that witness stand and put his arm up like Dr. G.  
3 did and swore to tell the truth, he would have had to  
4 answer this one very simple question:

5                  Were you telling the truth then, when you  
6 spun a yarn that this is brand new so you could make \$72  
7 billion, or are you spinning the yarn now, when you tell  
8 this jury we can't infringe, because what we're doing is  
9 not new?

10                I submit to you that's why it's more  
11 important that he not be in Tyler, Texas. And that's  
12 why he's not in Tyler, Texas.

13                So let me go over the verdict form with  
14 you. The last thing I'm going to tell you, and I'll  
15 talk to you more about it when I have my second chance  
16 to talk, is why their invalidity defense is silly and  
17 starts with a very simple proposition, and it was  
18 confirmed over here by Dr. Tribble.

19                And that is that they cannot lay hands on  
20 one piece of paper in their files of 30,000 employees to  
21 support the claim that they make in this courtroom  
22 before we sued them. That is, there's not one piece of  
23 paper anywhere in their files that contradict what their  
24 employees were saying about how important and new and  
25 innovative Dr. G.'s products were. It's not there.

2 here still on the clock, who were paid to come and try  
3 to kill Dr. G.'s patents.

4 You know, Dr. G.'s ideas attracted that  
5 guy who tried to kill him. Well, it attracted Jobs at  
6 Apple, and they are trying to kill his idea.

7 So let me go through the verdict form  
8 with you real quick.

9 Is the ELMO on?

10 Okay. So this is the verdict form. This  
11 is what I think. What counts is what you think.

12 The first question the Judge wants you to  
13 answer is, did they take our property? Did they  
14 infringe Dr. G.'s patent?

15 I think the answers are plainly yes.

16 Was it willful?

17 You've seen the proof of them telling us  
18 one thing and doing another thing and telling you  
19 something today in this courtroom that plainly is not  
20 true.

21 If that's not proof of willful  
22 infringement, then there's no willful infringement in  
23 the world.

24 Now, this is really why we're here. They  
25 are terrified of Dr. G.'s patents. They want to kill

2 proof to you.

3                   The Patent Office said they're good. Two  
4 of the people who showed up to testify in this case  
5 about how old news Dr. G.'s patents were have patents  
6 that were on the face of his patents and considered by  
7 the Patent Office before they said this was new.

8                   Why did they do that? Why did they waste  
9 your time that way?

10                  Think about that.

11                  Now, these are the damage numbers, and  
12 I'll talk to you more about these, but you remember the  
13 Judge told you that the -- the iPods are out; that's all  
14 been resolved.

15                  So what that means is that the numbers  
16 that Mr. Bratic -- you remember I got him up at the very  
17 last and I said, if you take the i's out, what do you  
18 have, and he said about 50 percent.

19                  These are the allocations that I thought  
20 were appropriate based on what I heard Bratic say, but  
21 in each instance, it's about 50 percent of that 6-1/4  
22 that Bratic told you about during his testimony, and  
23 that still means that they're making \$25 million every  
24 day.

25                  MR. RANDALL: Your Honor, I'm going to

2 knows darn well that's not what his expert said. He's  
3 inviting error in this Court by doing that.

4 THE COURT: Objection's overruled. The  
5 jury will disregard the objection.

6 MR. CARROLL: So -- so you look at these.

7 And, again, you heard the objection. That's what  
8 they're worried about. They're worried about their  
9 pocketbook. That's what they're squawking about.

10 But this is what they make off these  
11 products, and this is less than 1 percent -- less than 1  
12 percent. Any one of those numbers, there is a number 99  
13 times higher that they get to keep.

14 Now, I'm going to sit down now and let  
15 Mr. Randall talk to you. And then I'll have a few  
16 minutes left to talk to you afterwards.

17 But think about those things that I  
18 suggested to you that you question in your own mind,  
19 when he's talking to you.

20 Thank you, Your Honor.

21 THE COURT: All right. Thank you,  
22 Mr. Carroll.

23 The Court will now recognize Mr. Randall  
24 for purposes of closing argument.

25 MR. RANDALL: Thank you, Your Honor.

2 in this case, and I know you took time from your lives  
3 and your children. And Apple appreciates it, and I  
4 appreciate it.

5 I was a former prosecutor for a long  
6 time. Like a criminal -- I sat at that table and  
7 watched criminal defense attorneys point fingers at you  
8 all day long.

9 I have tried a lot of patent cases, but  
10 I've never sat through a case like this where there's  
11 two fundamentally different cases. There's Mirror  
12 Worlds' personal attacks, unnecessary, mean-spirited  
13 attacks, and then there's a patent case.

14 Now, we're really here for this patent  
15 case. That's what this case is about. The case is  
16 about a patent case. Mirror Worlds has patents owned by  
17 some hedge funds. David accused Apple of infringement.  
18 And the evidence that's relevant to this case and  
19 relevant for your consideration is, how do the Apple  
20 products operate?

21 Do they infringe?

22 What does the prior art look like?

23 Was he the first inventor?

24 Does he deserve the patents?

25 Does Mirror Worlds deserve these patents,

2 Were they the first to invent this or

3 not?

4 That's the evidence. Mirror Worlds spent  
5 that entire time, 30 minutes, railing on Apple and me  
6 and others.

7 But the point is, they never mentioned  
8 any evidence of infringement, right?

9 They didn't do it. They didn't go  
10 through anything. And this case was the same way,  
11 right?

12 It was their opportunity to lay out all  
13 their evidence about why -- how Apple's products operate  
14 specifically, whether they infringe, and whether the  
15 patents are valid.

16 Now, we sat there and took it, okay? It  
17 wasn't easy. But what we did is we focused on the main  
18 issues in this case. And I'm not going to get into a  
19 mud-slinging game, and I'm not going to call names.

20 I focused on the evidence, and I'd ask  
21 you guys to focus on the evidence. Focus on, how do  
22 Apple's products operate?

23 Did they prove infringement?

24 Did they prove every single element?

25 Absolutely not. In fact, we don't have

2 without any possible doubt, that we don't infringe these  
3 patents for multiple reasons. And I'm going to get to  
4 that in a minute.

5 I want to deal with a couple of these  
6 issues that were raised, and they spent so much time on,  
7 because I just can't sit there and let it go unanswered.

8 They really focused on four events, and  
9 the four events really aren't in dispute, right? Except  
10 for the spin that they put on those four events is  
11 enormous, right?

12 They say these four events mean some huge  
13 conspiracy, some huge plan to steal Mirror Worlds'  
14 technology. And it simply doesn't.

15 Let's look at some of those issues.

16 The first event is Steve Jobs saw a press  
17 clipping. He saw a press clipping regarding allegedly  
18 new software to organize documents, and he wanted  
19 someone to check out the software, okay?

20 That's a fact. It's not in dispute.

21 That's what happened. He saw it and he said, okay, go  
22 check it out.

23 That's not surprising. All tech --  
24 high-tech companies do that. They keep track of  
25 technology. Everybody does. And if there's something

2 there's a new way of organizing documents, go check it  
3 out, that's common.

4 He's a hands-on CEO. I think you saw  
5 that. They are committed to building better products.  
6 I think you saw Greg (sic) Croll and Steve Joswiak in  
7 Court, and you could tell they're excited about their  
8 products. You could tell Steve Jobs, when you see him,  
9 he's excited and passionate about his products.

10 Apple's entered into a whole host of  
11 licenses, and you heard evidence of that. So the idea  
12 of going out and checking out technology, if it's  
13 appropriate, go ahead, license it, and just go check it  
14 out.

15 Look at DX636, please. That's the  
16 Coverflow license. That's exactly what happened in  
17 that -- in this case.

18 Coverflow -- it's Exhibit 636. There it  
19 is. May 25, 2006.

20 Can you scroll down?

21 It's the exclusive right to create  
22 software application for music browsing to enable the  
23 user to browse by flipping through album cover art.

24 You can take it down.

25 And so if you look at that, you'll see

2 take a technology license to it for \$70,000, okay?

3 They don't -- they don't deal with that

4 too much.

5 So the idea that Steve Jobs would say go

6 check out that technology; if it's appropriate, take a

7 license, there's nothing wrong with that. And yet they

8 make it sound like it's just the worst possible thing in

9 the world.

10 The second fact that they attempt to

11 distort is that former Apple employee, Don Lindsay, went

12 out and checked out the Mirror Worlds technology at a

13 conference call -- a web conference call with them. And

14 he ultimately recommended not to pursue it.

15 Okay. That's what happens. If you -- if

16 you go out and check out technology, maybe you pursue

17 something; maybe you don't. But it's interesting --

18 let's take a look at what he would have learned, right?

19 What he either did learn or would have learned from

20 that.

21 And let's look at the purpose of the

22 meeting. There was a big discussion about what the

23 purpose of the meeting was.

24 Can you pull up 31, please?

25 All right. So Michael Satow says: Oh,

2 meeting; that two people that were there, Satow and  
3 Prager, Prager says: I asked them if they were trying  
4 to sell Lifestream applications, the software products,  
5 and he says: Yeah, that's all we were doing. We were  
6 just trying to sell a technology.

7 That's the sole and exclusive purpose of  
8 the call, okay?

9 Now, if you recall that examination of  
10 Mr. Prager, I asked him a whole host of questions about  
11 the meeting, right? I asked him about, you know, how  
12 long did it last, how long was this presentation,  
13 everything else.

14 He didn't remember much. He didn't. And  
15 that's okay, right? He was at the meeting. It was  
16 supposed to be some important meeting for Mirror Worlds.  
17 It was supposed to, according to Satow -- you can bring  
18 that down -- some big meeting.

19 And yet Mr. Prager doesn't really  
20 remember much about it, and that's okay. But Mirror  
21 Worlds has just -- chastises and rails on Apple's  
22 employees who weren't even at that meeting.

23 Who was at the meeting?

24 Don Lindsay. And so they claim that all  
25 these other guys that weren't at the meeting, and

2 either liars or thieves. That's just not true, and it's  
3 not right.

4 Now, what else would Lindsay have seen at  
5 this meeting?

6 The answer -- and I think they put this  
7 up earlier -- was Mirror Worlds had -- the -- the  
8 question was, how do I find my stuff, right?

9 That they came up with a new way of  
10 finding your stuff. Information is on the computer;  
11 it's in folders; you can't find it. How do I find my  
12 stuff? Apparently, there's a new way of doing it.

13 When I asked Prager about that, how do  
14 you do it, he said: We use a third-party software. The  
15 search engine that we use is Verity.

16 So this -- how did they solve the  
17 where's-my-stuff problem? Where's my stuff?

18 They just walked over, got some  
19 third-party software from Verity. Satow said it was a  
20 commodity. Remember, he said it was commodity. Oh,  
21 yeah, it was available at that time.

22 They got third-party software. They put  
23 it in their product. And that was the technology  
24 software that allowed them to find their stuff.

25 So when Lindsay looks at it and he says,

2 they show him?

3 They show him a Microsoft operating  
4 system, which is a competitor to Apple. It's not even  
5 compatible. And he says, well, we have this search  
6 engine, Verity search engine, running on Microsoft. How  
7 would you like that, Apple?

8 What do you think Apple's going to say?

9 Well, thanks but no thanks, you know. Thanks but no  
10 thanks.

11 Slide 36, please.

12 The other thing about perhaps what was  
13 said during this meeting, was Mirror Worlds has this new  
14 way of organizing information in a chronological stream.

15 There are problems with that, if you  
16 think about it.

17 Think about photographs, right?

18 Photographs come into your system over a period of two  
19 or three years, and they're spread out chronologically  
20 in a stream.

21 Okay. Maybe it's better to put them all  
22 in a folder labeled family photos or something like  
23 that. And that's what's being referenced here at --  
24 this is DX690. That's where Professor Gelernter is  
25 describing one of the problems associated with

2 logically in folders.

3                   And I asked Randy Prager about this  
4 e-mail, and I said: What's the problems with the  
5 implementation of the mainstream that Mr. Gelernter's  
6 discussing here in this e-mail?

7                   ANSWER: It seems to me he's  
8 contemplating the problem of showing the stream in a  
9 time -- time series. And he says that's a huge problem.  
10 And it is. It's a problem, because there's some things  
11 perhaps you want to store chronologically, and there's  
12 some things you want to store logically in folders. And  
13 it was a problem with their system, and even Dr.  
14 Gelernter understood that.

15                  I also asked Mr. Prager, if you recall,  
16 questions about -- he said that they were having  
17 problems, because corporate customers looked at Mirror  
18 Worlds as having kind of a fancy user interface with a  
19 search engine, and that was it. And he said, yeah,  
20 that's how people thought of us.

21                  So when Don Lindsay went to meet with  
22 them, he would see this system that was really a  
23 Microsoft operating system using Verity's search engine.  
24 And he looks at it and says, okay, thanks but no thanks.  
25 And pretty much everybody else did, too. I'm not going

2 success, right? It wasn't.

3 They invested \$18 million in their  
4 company to try to make this, and they came up with  
5 Microsoft Office with a Verity search engine. They  
6 didn't even implement their invention. They certainly  
7 didn't. And it wasn't a commercial success, okay?

8 And so when Don Lindsay looks at it, he  
9 says: I think that we'll just continue on with our own  
10 indexing and search capability. Politely, he says that,  
11 and I'll get to that in just a minute.

12 DX661, please.

13 Okay. If we start at the bottom here,  
14 this is -- this is Mr. Lindsay responding to Randy  
15 Prager. And he says: We are going to continue to  
16 refine our existing indexing and file searching  
17 technologies and investigate how we might utilize some  
18 of our existing patents and designs in our efforts to  
19 further simplify the file management experience. And he  
20 says: I appreciate your time.

21 And the response from Randy Prager says:  
22 Basically sounds good. You know, Best, Randy. He  
23 doesn't -- he doesn't make a personal attack on him. He  
24 doesn't say: Well, why don't you take a license to  
25 these patents?

2 question about where are the e-mails. Where are the  
3 e-mails? Where are all these e-mails about all these  
4 patent licensing discussions?

5 Now, there's also a comment about -- too  
6 many comments about Steve Jobs. He introduced -- and  
7 this is an event that occurred certainly. He introduced  
8 Apple's new operating system in 2004, and he said that  
9 many of its features were awesome and revolutionary.

10 Well, he says that a lot, because he has  
11 passion about his products. He has passion about his  
12 company. And he believes firmly and sincerely and  
13 righteously that his products are better than everybody  
14 else's. And I believe it, too. I think most people do.  
15 There's nothing wrong with that.

16 Can you play those clips?

17 Why don't you play CC01. This is from  
18 June 2004.

19 (Video clip played.)

20 MR. RANDALL: How dare he have such  
21 conviction and passion in his products that he spends a  
22 lot of time and effort in his lifetime inventing and  
23 coming up with. Why don't we punish him?

24 Now, the last event that they attempt to  
25 distort is that eight years -- eight years after this

2 the meeting, they depose a whole slew of Apple employees  
3 who are on an e-mail string one or another, and they ask  
4 them: Well, what do you remember about a meeting with  
5 Dr. Gelernter or Mirror Worlds, or what do you remember  
6 about this meeting and what do you remember -- you know  
7 what -- and they say: I don't remember. I don't  
8 remember.

9 Is that really criminal?

10 Prager didn't remember it, and it was  
11 supposed to be a really important meeting for these  
12 guys. And it's okay. I don't blame them, and I think  
13 that's natural.

14 But how can you possibly punish and say  
15 the things that were said about Apple employees because  
16 they couldn't remember some meeting or some event that  
17 they had little or no involvement with? Eight years  
18 later.

19 These four events that I just talked to  
20 you about, they spent their entire case putting on.  
21 What about the patent case? I mean, I thought we were  
22 here to talk about the patent case.

23 And I'm going to talk about it right now,  
24 but I spent my time and I'm going to spend my time right  
25 now talking about the patent case and explaining why we

2 But this other stuff -- there are four  
3 events, and they're really not in any dispute. What's  
4 in dispute is the characterization and the spin that  
5 they put on them; and it's improper, it's mean spirited,  
6 and it's not appropriate.

7 Now, let me go through just a couple of  
8 issues. The -- one issue before I move on. They claim  
9 that there are all these e-mails and everything else,  
10 and they claim -- I mean, their theory really is that  
11 Apple went and they stole this technology in 2001.

12 And -- and then they -- what did they do?  
13 Did they develop it? I think that's what their  
14 suggestion is.

15 If Apple had done that, there would be  
16 thousands and thousands and thousands of e-mails and  
17 development documents and research and development  
18 documents, right? Not just a few e-mails. There would  
19 be thousands and lots of development topics.

20 And why would Apple ever be interested in  
21 going off and licensing and checking out Coverflow?

22 Apple has Coverflow. They licensed it in  
23 2006. They licensed Coverflow in 2006, some five years  
24 after they, apparently, stole the idea.

25 If they stole the idea and implemented

2 would never even need Coverflow.

3 You know, Apple is sitting here in this  
4 case because they were sued for infringement. There was  
5 never ever any suggestion by these guys that Apple  
6 infringed, right?

7 There was no evidence at all ever, from  
8 any of the inventors, from Mirror Worlds, from  
9 Plainfield, from Recognition Interface, no one ever  
10 claimed that Apple infringed.

11 No one ever said: Maybe you need a  
12 license. Maybe you infringe. Maybe you, you know,  
13 should talk to us about that ever. The lawsuit was  
14 filed, and that's the first notice of it.

15 Now -- can you go to Tab 1, please?

16 We went through this case, and we  
17 presented evidence regarding the patent claims and what  
18 they require, and the key concepts of each patent claim.

19 Now, that -- and the board is right here  
20 in front of you. Across the top shows all the claims  
21 that are at issue in the case, and then those colored  
22 summaries down on the left are, obviously, the key claim  
23 elements that are in these claims.

24 Apple -- they, Mirror Worlds, has to show  
25 and prove to you that Apple's operating systems perform

2 each and every one of those Apple doesn't have to do  
3 this, but we have affirmatively proved we don't do any  
of them. There can't be infringement.

4 So the first one -- let's go to -- I'm  
5 going to show you the claims briefly.

6 Let's go to Tab 2.

7 So each of the claims are at the back of  
8 the patents, the asserted claims, and you can see what  
9 we have done. We've summarized stream. And in yellow,  
10 that's where the stream elements appear. In purple,  
11 that's the timestamp to identify.

12 Go to the next slide.

13 '427 claims, and these are, you know,  
14 Claims 1, 8, 16, 18, and 25, all on this page, and  
15 they're color coordinated with the elements, okay? And  
16 I'm going through this pretty quickly, but if you look  
17 at them, that's where they are, okay?

18 And the same thing with the '313.

19 Now, if any of those are missing -- see,  
20 they have to prove all of them. If any are missing,  
21 Apple doesn't infringe.

22 Let's go to 5.

23 Now, so the time-ordered stream, all of  
24 the yellow items in the claims, they have to prove that,  
25 and the Court has said that it's a time-ordered sequence

2 entity's electronic life. And it has three main  
3 portions: Past, present, and future.

4 Do you see that?

5 Now, as we've said before, Macintosh has  
6 a hierarchical file folder system. It requires user  
7 names, and those -- that is exactly what this whole idea  
8 was attempted to avoid, right? They are fundamentally  
9 different. I said that at opening, and I mean it, and I  
10 proved it.

11 Now, the Spotlight Store, it's not  
12 time-ordered, right? You heard that, and you had the  
13 proof from the source code.

14 John Hornkvist testified -- and he was --  
15 there was really no challenge on that, right? He said:  
16 Listen, the source code is clear that we don't do it.  
17 Spotlight Store is not time-ordered, period.

18 What did they do to question him? They  
19 just avoided it.

20 It's ordered by ID number, and merely  
21 searching for documents and sorting them by date, that's  
22 something that was well known before the Mirror Worlds'  
23 patents. That's not the invention.

24 Now, the other issue, Spotlight is not a  
25 diary of a person's electronic life. It certainly

2 didn't put any evidence on that.

3 That it's a diary of a person's  
4 electronic life, and Spotlight can't be sorted by future  
5 date. There just aren't future dates in Spotlight.

6 And so Apple does not meet that  
7 limitation. They cannot infringe independently of  
8 anything else. And we don't have the burden to show  
9 that.

10 Next one.

11 No mainstream. And this one is a pretty  
12 simple one. The mainstream is inclusive of every data  
13 unit, all right? And Spotlight is not a mainstream, as  
14 it does not have every document in the system.

15 Now, do you remember the inventors told  
16 the Patent Office: You have to have every document in  
17 the system?

18 Let's go to the next slide.

19 All right. Mirror Worlds told the  
20 office -- the Patent Office -- and they had to amend  
21 their claims to get this patent out, and they said the  
22 amended claims -- the invention, as recited does not  
23 permit data units to be removed from the mainstream and  
24 still remain in the computer system. You can't do that.

25 And then I asked Dr. Levy, their expert,

2 documents in the computer are not maintained in this  
3 mainstream, which as they say is Spotlight, as the Court  
4 defined it, then the system does not infringe, right?

5 And he says: Yeah. We have to be sure  
6 what a data unit is.

7 But we know what that is. It's a piece  
8 of information that's important to the user or has some  
9 significance.

10 And he says: But if you're looking at  
11 the Court's data unit, that's correct, all right?

12 Now, we showed that our operating system,  
13 Apple's operating system, has a privacy folder, right, a  
14 privacy folder for you to put your important documents  
15 in and take them out of the kind of public spotlight or  
16 the ability to search those documents.

17 It's clear proof of non-infringement. We  
18 have a specifically designated spot to put your  
19 important documents outside of Spotlight, so they can't  
20 be viewed in searches by your kids or whomever,  
21 colleagues.

22 Now let's go to the next slide.

23 This is Dr. Levy's opinion on that, and  
24 he said: I believe any document that the user  
25 designates that he doesn't wish in the Spotlight Store

2 user.

3 How does he know that? Does he -- does  
4 it take a computer science degree to figure that one  
5 out? That when Apple says: Here's a privacy folder;  
6 you can put that which is important to you in there to  
7 keep away from the spotlight, that right there is  
8 non-infringement, plain and simple.

9 And it's clear, and they didn't -- they  
10 can't possibly avoid it. And we showed it, and they  
11 just haven't dealt with that issue at all. They've  
12 ignored it.

13 Now -- let's go to the next slide.

14 All right. Timestamp to uniquely  
15 identify. This is another important one.

16 Timestamp to identify means a date and  
17 time value that uniquely identifies each document.  
18 Spotlight does not use a date and time to uniquely  
19 identify a document. Spotlight uses the unique ID  
20 numbers, remember?

21 And I showed you, and we showed a number  
22 of windows showing, that there's oftentimes the same  
23 date in the system at Apple. And Apple doesn't really  
24 care because it uses the unique ID number.

25 And when I asked Professor Lansdale, with

2 and timestamp, he said: Well, of course it does. You  
3 have to have that date and timestamp to put it in order.

4 This makes sense. They are two  
5 fundamentally different systems; Apple's file folder  
6 systems; this time-ordered sequence of documents. If  
7 you're going to have a time-ordered sequence of  
8 documents, you better have a timestamp that you can use  
9 to put them in time order. That makes sense. Apple  
10 simply doesn't do that.

11 And the key here is that that date and  
12 time value has to uniquely identify each document. It  
13 simply doesn't. The fact that we have multiple  
14 documents with the same date and time on it proves that.

15 And, again, we don't have to prove it,  
16 but we proved non-infringement.

17 Next one.

18 Two operating systems. There are two  
19 operating systems that are required. I didn't hear any  
20 evidence on that.

21 Macintosh is an operating system. It's  
22 not a stream-based system. And they didn't show how it  
23 utilizes two operating systems.

24 Let's go to the next one.

25 Receding foreshortened stack. We spent a

2 with this Cowart reference, right?

3 I mean, you can't go to the Patent Office  
4 on one hand and say: We deserve the patent.

5 The Patent Office shows them Cowart and  
6 says: I don't know. You're not going to get this  
7 patent. Look at Cowart's prior art stream of documents.  
8 I don't think you're going to get the patent.

9 And they say: No, no, no, no, that's not  
10 our invention. That's not our invention. Our  
11 invention -- see, in that -- in Cowart, the windows  
12 don't get smaller towards the bottom of the stack. The  
13 important distinction highlights a key aspect of the  
14 streams of the present invention, okay?

15 They're pointing out to the Patent  
16 Office, saying: A really important part of our --  
17 our -- our invention is that these document  
18 representations get smaller as they go to the back.

19 They recede, okay, and they get  
20 foreshortened.

21 And we simply don't do that, and we  
22 proved it.

23 Go to the next one.

24 So this is a demonstration or a display  
25 of Overflow, and Overflow is not receding, right? We

2 from multiple people. The source code dictates where  
3 those images appear, and they appear in one flat plane,  
4 okay?

5 They do not recede, and they don't get  
6 smaller as they recede. And that was a key, important  
7 aspect of the invention. That's what they told the  
8 Patent Office in Cowart, okay? And that's what those  
9 red lines there are showing.

10 Now, remember Levy, when I asked him  
11 about this?

12 Let's go to Slide 32 for a moment.

13 Levy was all over the map on this issue.  
14 He had to revise his opinion on the Coverflow numerous  
15 times. So he first said that -- he testified that there  
16 were two stacks in Coverflow.

17 Then he revised his opinion and said:  
18 Well, I think I'm going to have to revise what I said  
19 about the first in the stack.

20 And then he further revised his position:  
21 I think I have to revise that again.

22 Remember, I asked him, I said: You spent  
23 two years on this case.

24 And he came for his deposition, and he  
25 revised his opinion three times in the deposition. And

2 he's trying to stretch these claims; he's trying to  
3 manipulate and twist these claims.

4 The bottom line is, the claims require a  
5 receding back into space and foreshortened, getting  
6 smaller, and we don't do it.

7 We heard from our witnesses, multiple  
8 witnesses, the source code dictates that those Coverflow  
9 albums are flat, and they don't -- they don't go back  
10 into space, and they don't get smaller.

11 And I asked Levy about lighting and  
12 everything else, and he said: Yeah, that's not in the  
13 claim. It's not in the patent. You can look. Lighting  
14 and all of those other things, not in the patents.

15 Let's go to 13 -- the next. Oh, I'm  
16 sorry. Yeah, 13.

17 Displaying of cursor without --  
18 displaying a glance view in response to sliding the  
19 cursor over the stack.

20 Again, when you slide the cursor without  
21 clicking, it has to show the glance view, right?

22 Let's go to Clip 6.

23 (Video playing.)

24 (Video stopped.)

25 MR. RANDALL: Now, watch that black

2 happening. Where's the glance view? Nothing, okay?

3 We don't have to prove non-infringement, but that proves  
4 it right there. There is no glance view. You slide  
5 that thing across without clicking, the glance view  
6 doesn't pop up, okay? Nothing happens.

7 Let's go to 14.

8 I just went through all of these key  
9 elements of their claims. Apple doesn't do any one of  
10 them, okay? They have to prove -- it's their burden to  
11 prove each and every one of those that Apple does.  
12 Apple doesn't do any of them. We don't infringe, and we  
13 don't infringe for multiple reasons. And while we don't  
14 have the burden, we have affirmatively proved it.

15 15.

16 Now, these are all prior inventions. It  
17 says: Where's my stuff was solved before Mirror Worlds.  
18 There was a suggestion that this whole idea about lots  
19 of documents and folders and everything else in the  
20 system was something that he first came up with. Well,  
21 look, a lot of people were thinking about this; a lot.  
22 And you heard from them. I mean, that is a fact.

23 A lot of people were thinking about this  
24 problem in the computer industry all over the world, and  
25 you heard from these three individuals about how to find

2 Mirror Worlds filed for the patents, in June of '96.

3 Let's go to 16.

4 Here is the timeline of art. And if you  
5 look at the invalidity bar, that little red thing down  
6 in the bottom right, that is the date -- the critical  
7 date, okay?

8 So if there's prior art that was publicly  
9 available before that date, and it discloses the  
10 inventions, the patents are invalid, okay?

11 And so we're going to go through each one  
12 of these categories of key prior art.

13 First of all -- flip -- can you flip --  
14 okay.

15 This -- these are the visual  
16 representations. And I think Levy said: Oh, I didn't  
17 see any of these visual representations in the prior  
18 art.

19 Well, look at -- look at the receding  
20 foreshortened stack in Workscape; look at it in Lucas --  
21 so right here in Lucas, receding foreshortened stack.

22 Okay. I need that up.

23 Look at it right here in Workscape,  
24 receding foreshortened stack. Look at it right here,  
25 same thing. See, it gets smaller, goes back in space,

2 And they said that they were the first. They weren't  
3 the first.

4 Go to the next one, 18.

5 Okay. Prior art: Organizing in  
6 chronological order. Remember this great concept of  
7 saying let's put it all in chronological order, like  
8 your life, like a diary? Okay. It's been done before.

9 It has.

10 And I think there was suggestion: Oh,  
11 I -- there he goes again. He was going to say that. I  
12 knew he was going to say it.

13 Well, of course, he knew I was going to  
14 say it, because we've disclosed all this art to them,  
15 and it's been our case for a long time that he didn't  
16 come up with this stuff.

17 Do you remember MEMOIRS, Professor  
18 Lansdale, saying: It's a diary; it's an electronic  
19 diary? That was specifically what that system was  
20 designed to do. It had a timestamp. It had  
21 everything -- it organized all different types of data  
22 in one time-organized diary, electronic diary, and they  
23 did it well before 1989.

24 I'm running out of time in a hurry.

25 Let's go to the next slide, 20. I'm

2               Okay. Here are other references -- much  
3 of the same references showing sorting documents by  
4 date, right?

5               Remember Workscape? It split all these  
6 documents and sorted them by date. Piles sorted them by  
7 date. Obviously, MEMOIRS sorted them by date.

8               Go to the next slide.

9               Now, prior art: Sliding the cursor over  
10 the stack to display glance view without clicking.

11               Do you remember Gitta Salomon? She came  
12 in from -- she doesn't work at Apple anymore, but she  
13 came in, and she showed her Piles demonstration.

14               The video was played at the 1994 CHI  
15 Conference -- or maybe it was '92, but it was well  
16 before the '96 patent. And she showed how you take the  
17 cursor and scroll up and down and show the glance view.

18               Also, in 1979 at MIT, you could slide  
19 your finger along that -- that stack right there and  
20 show glance views. That idea was not new either.

21               Let's go to the next slide.

22               Now, what we showed, we showed each and  
23 every one of the elements. And so Workscape, along with  
24 Piles, discloses every single element of these claims.

25               Workscape with SDMS discloses every

2 and Piles discloses these.

3 And so any combination of these shows all  
4 of the components of the inventions, all of them.

5 Let's go to the next slide.

6 All right. So here is Workscape plus  
7 Piles, and you see that each of the components of the  
8 claims are shown in -- in the combination of the two  
9 references, and that is completely appropriate.

10 That's what happens in the computer  
11 industry. You look at what's out there, and you say:  
12 Okay. I can put this system together.

13 Let's go to the next one.

14 Workscape plus SDMS. SDMS was the MIT  
15 work in '79, plus Dr. Lucas's work at Workscape, showing  
16 you the combination of the two.

17 All right. Now, I just have a few  
18 minutes left. Let me -- let me talk about damages for a  
19 minute.

20 They came in here, and they claimed that  
21 they're entitled to -- their expert first said they're  
22 entitled to \$625 million, and then right before the  
23 close of the evidence, the expert said: Well, it's only  
24 half of that, okay?

25 Remember? Because some of the other

2 all right. So roughly \$300 million.

3                   And then Mr. Carroll gets up there and  
4 says: Well, no. Actually, for each one of those  
5 patents, it's 322, 336, 320. How did it go from half to  
6 nearly a billion dollars?

7                   Also -- let's show 40.

8                   Now, you heard from our expert -- and I  
9 asked their expert, I said: Remember the cards? They  
10 first looked like one side were down and one side was  
11 up, and I said: Isn't it true that they're -- both  
12 sides are up? And the answer is yes.

13                  So at the hypothetical negotiation, what  
14 would occur, both parties have to have their cards up,  
15 okay?

16                  And what Apple would learn is that they  
17 were running out of business. At the time of the  
18 hypothetical negotiation in 1990 -- in 2004 -- 2004,  
19 Mirror Worlds was running out of business, and they were  
20 going to sell their patents for \$200,000, remember?

21                  They didn't commercially -- they weren't  
22 successful in commercializing. They didn't achieve any  
23 significant licensing partners. They sold their patents  
24 for \$210,000. And they had attempted to contact these  
25 folks, Google, AOL, and Yahoo!, for some money or

2 So they really didn't have much going on,  
3 and they ultimately sold their patents for \$210,000.

4 Let's go to 33.

5 Now, here's Frank Weil. He made a sale  
6 for \$210,000.

7 And here's Plainfield. They purchased  
8 them for \$5 million. And that is during the period of  
9 the hypothetical negotiation, right?

10 Between this time or right before this  
11 time and this time (indicates), the hypothetical  
12 negotiation would have taken place, and what their  
13 expert says is it would have been a license.

14 No. The patents were for sale, lock,  
15 stock, and barrel, and they were for sale for 210,000  
16 here and 5 million here (indicates), and both experts  
17 say the hypothetical negotiation would have taken place.

18 So if there was a hypothetical  
19 negotiation, and both sides had their cards up, what  
20 would have happened? And they wanted to strike a deal,  
21 which is part of the deal -- part of the rules.

22 The entire patents would have been sold  
23 for somewhere between that range likely, okay?

24 Somewhere between that range. If it was  
25 a license, it would be less, right? Because you're not

2 Those are the facts. We don't have to  
3 make this up. They say: Let's play pretend; let's make  
4 it up. We really don't have to make it up, because it  
5 happened. And it wasn't a license.

6 It would be different -- if it was a  
7 license here and a license here (indicates), we'd have a  
8 little better facts. But this is a sale. So we know  
9 it's less than the cost of all the patents, lock, stock,  
10 and barrel.

11 So the hypothetical negotiation, you look  
12 at this date; you look at that date; you say the  
13 hypothetical negotiation would take place in between  
14 there; and it would be less than the sale of the whole  
15 patents because they say they would have been a lump-sum  
16 license, so something less than that. Those are the  
17 facts.

18 THE COURT: Mr. Randall, you have about  
19 five minutes left.

20 MR. RANDALL: Thank you, Your Honor.

21 Let's go to 41.

22 You remember our expert? Common sense,  
23 right? He said: It's like you're buying a house,  
24 right?

25 Let's figure this out. Let's figure out

2 in here, the same house sold for 5 million, right? That  
3 was the Plainfield deal. Plainfield deal.

4 So \$210,000 in June of 2004, and then the  
5 Plainfield deal is in 2007 for 5 million. What would  
6 the house sell for in between? Are you kidding?

7 Well, actually, we should revise that,  
8 because I think Mr. Carroll said that should be a  
9 billion dollars. That's nonsense. You know, you've got  
10 to look at the facts.

11 These were other licensing deals taken by  
12 Apple around the same time, which our expert said  
13 actually have more relevant technology, okay?

14 Somewhere in between \$210,000 and 5  
15 million, that's for buying the house, not renting the  
16 house. Renting the house would be less.

17 Now -- let's go to 34.

18 Now, we've heard throughout this case  
19 that this case is about Dr. Gelernter and about, well,  
20 Apple just doesn't care about this case. They brought  
21 this case.

22 They opened up a company -- this hedge  
23 fund in New York opened up this company in Tyler, Texas,  
24 and frankly, they didn't even know where Tyler, Texas,  
25 was. If you watch Peter (sic) Stone on that videotape,

2 said: Tyler, Texas? He didn't even know where it was.  
3 They didn't show up, right? Where are they? They're  
4 the ones with their hand out, right? Where is  
5 Plainfield? Where is Ed Stone? Where are any one of  
6 these folks? Where's Frank Weil? He gets 19 percent.  
7 These guys get 74 percent.

8 That's why we're here. We're here  
9 because there's a big investment hedge fund up in New  
10 York, and a couple of them that bought these patents  
11 want to make money off of them, okay? That's why we're  
12 here. And that's a fact.

13 Apple has spent its entire corporate life  
14 dedicated to making better products for consumers. They  
15 are an amazing company, and they deserve better than  
16 this.

17 Thank you for your time.

18 THE COURT: All right. Thank you,  
19 Mr. Randall.

20 The Court will recognize Mr. Carroll for  
21 rebuttal closing argument. You have 12 minutes left,  
22 Mr. Carroll.

23 MR. CARROLL: Thank you, Your Honor.

24 Let me thank you again.

25 And they say, why is Apple here? You

2 murdered by facts. Let me show you how this is going to  
3 murder his facts.

4                   When you get Judge Davis's Charge, this  
5 big thick instructions document that he read to you,  
6 look at Page 25. Write that down, if you would. And  
7 let me tell you why I'm suggesting that.

8                   On Page 25, when Judge Davis is talking  
9 about what you should and shouldn't consider in reaching  
10 the damage issue, which is what this case is about,  
11 here's what he says: You must also bear in mind that  
12 the hypothetical negotiation is deemed to be arm's  
13 length, an arm's-length transaction, and any prior  
14 royalty arrangement between a patent owner and a related  
15 entity or non-competitor is not determinative when  
16 analyzing the hypothetical negotiation.

17                  Here's what that means. You remember  
18 Bratic, who's a certified public accountant, sat on that  
19 witness stand and told you that none of those  
20 transactions that Mr. Randall just pointed to were  
21 arm's-length transactions. They were brother-in-law  
22 deals, the right pocket/left pocket. The same people  
23 were involved in both companies.

24                  They don't even dispute that. But they  
25 want you to walk into that jury room and violate your

2 law says.

3 And Judge Davis told you what the law  
4 says: You can't use those kinds of things. But their  
5 whole damage model is built on that house of cards.

6 Go to Farmer Brown No. 3.

7 Let me tell you what I'm talking about  
8 here. Okay. You remember our farmer here. He's caught  
9 the oil company who's drilled a well on his property  
10 without his permission.

11 Now, that's like patent infringement.

12 Remember, it's a trespass.

13 Now, the law says that he's entitled to  
14 make the oil company pay up, just like the patent owners  
15 here are entitled to make those trespassers pay up.

16 Here's what they're suggesting to you  
17 that this guy would have done. He would have gone to  
18 British Petroleum here, and he would have said: Okay.  
19 What are you going to give me?

20 And British Petroleum would have said:  
21 How about a thousand bucks?

22 And he would have said: Okay. That's  
23 great. Why a thousand?

24 Well, that's what we paid the people next  
25 door for leasing their property.

2 What would be the first question that that guy would  
3 ask? What have you found? What's down there? I'll  
4 share with you. If it's a little, I get a little, and  
5 you get a little. If it's a lot, we both get a lot.

6 That's the damage model we brought to  
7 you, 'cause it makes sense. What they're bringing to  
8 you makes no sense. Why would a patent owner ever do  
9 that? And the answer is, they wouldn't. They wouldn't.

10 You know, their damage man, maybe in one  
11 of the best Perry Mason moments of the trial when my  
12 friend, Joe Diamante, over here was after him, he said:  
13 Under your analysis, it wouldn't matter whether Apple  
14 made a dollar or a billion dollars, you'd still give us  
15 that same number?

16 And what was his answer? That's right.

17 You know, we all remember that great  
18 scene in Wizard of Oz when the little dog pulls the  
19 curtain back, and there's the -- turns out the wizard is  
20 nobody other than some old guy pulling levers, and he  
21 makes the wizard voice say: Pay no attention to the man  
22 behind the curtain.

23 That's what they want you to do. They  
24 want you to ignore this ton of money they have made  
25 selling the patents that we have the ideas behind.

2 damages, and then I want to talk a little bit about what  
3 Mr. Randall said.

4                   And I guess I drew blood. He bowed up  
5 pretty good. But, you know, old Harry Truman says: If  
6 you can't stand the heat, don't go in the kitchen. And  
7 that means don't take other people's stuff and expect  
8 them to roll over just because you're who you say you  
9 are.

10                  Number one, remember the testimony that  
11 drew all the objections over here about this company  
12 called Intellectual Ventures? You remember that.  
13 Intellectual Ventures, it turns out, is a company owned  
14 by the big boys on the west coast, Intel, Microsoft, and  
15 Apple.

16                  And you remember the testimony is that  
17 not once, but twice, Intellectual Ventures tried to buy  
18 these patents; one time, before the suit, for 7 million  
19 bucks, plus 20 percent carried interest; and another  
20 time, after the suit, for 30 to \$50 million, plus 10  
21 percent.

22                  They don't want you to remember that.  
23 They don't want you to think about that. They want you  
24 to think about \$200,000, which they spent more during  
25 this trial, during this trial than they would pay this

2 not right.

3                   The second thing is, is that when Yale  
4 bought into the little company, Mirror Worlds, you heard  
5 Dr. G say, they evaluated the company way back then at  
6 50 million bucks.

7                   Now, did it make it? No. It failed.

8 But ask yourself this: If Apple hadn't been infringing  
9 and, in fact, had done what it should have done and  
10 played fair and taken a license, that little company  
11 wouldn't have failed. Those people wouldn't have lost  
12 their jobs. That's why we're here.

13                  Okay. So that's -- that's one thing to  
14 look at in that Court's Charge, and I think -- and by  
15 the way, this whole business about triple dipping, look  
16 at Judge Davis's questions that he asked you. These are  
17 his questions.

18                  You know, if Mr. Randall has a fuss, he  
19 ought to take it up with the Judge. These are the  
20 Judge's questions. He wants damage numbers for each  
21 separate patent. That doesn't mean we're going to get a  
22 billion dollars. That just means the Judge wants to  
23 know why you believe or if you believe what the value is  
24 of the reasonable royalty for each patent.

25                  The reason these numbers made sense to me

2 would have all been part of the same hypothetical  
3 negotiation.

4 The numbers are a little different, based  
5 on the different products; but that's up to you. I  
6 think they're all around 300, 300-and-a-quarter apiece,  
7 if you believe that we were, in fact, the victim of  
8 patent infringement.

9 So let me get to a couple of other  
10 points.

11 Let's put up No. 1183.

12 Now, one of the things that you know by  
13 now about this case is that there were a lot of hired  
14 people who testified.

15 Now, blow that up.

16 There are two pieces of evidence in this  
17 case that weren't paid for. This is one of them. This  
18 is that article that Mike Satow sent his old Chairman of  
19 the Board when he saw it in 2007, three years ago, from  
20 this Information Week, this business technical  
21 publication.

22 Look what it says: It says: Back in  
23 2001, noted computer scientist, David Gelernter, started  
24 a company called Scopeware that proposed a similar  
25 scheme to view files in a timeline. The market wasn't

2 team have refined Gelernter's vision, and this time it  
3 looks more promising.

4 You remember, I talked to Dr. Tribble  
5 about that, and I said: They're accusing you in that  
6 article of patent infringement.

7 And he said: Yeah, pretty much. Pretty  
8 much.

9 That's nobody's paid testimony. That's a  
10 technical journal. Think about that when you're trying  
11 to decide which one of these paid witnesses to listen  
12 to.

13 Let me get you to pull up -- and the last  
14 thing, before I forget about it. You remember I talked  
15 to Dr. Tribble about the one e-mail that we found where  
16 he was asked to think about Dr. Gelernter? You  
17 remember, in 2004, the Navy wanted him to speak at a  
18 conference?

19 And the question was: Rethinking the  
20 Desktop Metaphor. And the request of him was --

21 And let's pull up 1995, James.

22 And the question was: Will you have --  
23 lift that out, that second paragraph.

24 Now, this is -- this is -- this is 2004.  
25 After all of these prior art references have come and

2 look what the Navy man was saying to him.

3                   Gelernter argues the current desktop  
4 metaphor is dead and proposes Lifestream instead. Is  
5 this a good proposal? Are there others better?

6                   Now, of course, Dr. Tribble can't  
7 remember, but if they really and truly thought and had  
8 evidence that this wasn't a new idea that he came up  
9 with when the Patent Office patented it, why wouldn't  
10 Dr. Tribble say: You know what? As soon as I got that,  
11 I wrote them back and said Gelernter's ideas are old  
12 news. There's nothing new there. It's not a new  
13 solution. So forget about it.

14                  They didn't do that, because it's not  
15 true. It's just not true. The Patent Office looked at  
16 a lot of the stuff that they want you to focus on.

17                  Let's go to that one slide, James,  
18 that --

19                  THE COURT: You have about a  
20 minute-and-a-half left.

21                  MR. CARROLL: Thank you, Your Honor.

22                  The Apple's invalidity friends.

23                  Okay. These are the folks they paid to  
24 come to Tyler and try to kill Gelernter's patents. And  
25 you know what? None of them had articles in the New

2 yet they all want to take a swing at it.

3                   And they're getting paid to do that, and  
4 they're sitting right out there in the peanut gallery  
5 today with the meter going. Pretty good gig.6                   So what is this really about, Ladies and  
7 Gentlemen of the Jury? This is about a mirror world,  
8 and it's a mirror world, mirror world on the wall.9                   And Apple looked into that mirror world  
10 and wanted that mirror world to tell it that it was the  
11 most revolutionary sexy rock star in the world of  
12 computers, and the mirror world said: No, you're not.  
13 This guy is.14                   And they didn't like that, and so they  
15 decided they were going to come down to Tyler, after  
16 having gotten caught taking his property, and kill his  
17 ideas. And all we've got to protect ourselves is you.18                   They can get on us for teaming up with  
19 the people that have a little money. How do you think  
20 we could have stayed in the game with these guys? How  
21 do you think we could fight these guys without a little  
22 bit of backing on our side?23                   So go into that jury room. Think about  
24 what they have said before and after. Think about the  
25 money they're making. And the Judge said you're looking

2 first day, and we're confident your verdict will say  
3 that.

4 Thank you.

5 THE COURT: Thank you, Mr. Carroll.

6 MR. CARROLL: Thank you, Your Honor.

7 THE COURT: All right. Ladies and  
8 Gentlemen of the Jury, that concludes the closing  
9 arguments. You've heard everything from opening  
10 statements, all of the evidence, the Court's Charge, the  
11 closing arguments, and it's now time for you to really  
12 go to work on this case.

13 And so I'm about to retire you to the  
14 jury room, and my instruction about not to discuss this  
15 case among yourselves no longer applies. I'm  
16 instructing you to discuss this case among yourselves  
17 and to reach a verdict in the case.

18 So there should be lunch waiting on you.  
19 Select your foreperson, decide how you want to proceed,  
20 and you're in the driver's seat now. We'll be waiting  
21 to hear back from you.

22 The jury is excused at this time.

23 COURT SECURITY OFFICER: All rise for the  
24 jury.

25 (Jury out.)

2 Anything further from the Plaintiff?

3 MR. CARROLL: No, Your Honor.

4 THE COURT: Anything further from the  
5 Defendants?

6 MR. RANDALL: No, Your Honor.

7 THE COURT: All right. We'll be in  
8 recess awaiting the jury's verdict.

9 COURT SECURITY OFFICER: All rise.

10 (Recess - Jury deliberations.)

11 (Jury out.)

12 THE COURT: Please be seated.

13 All right. We have a note from the jury  
14 that says: Request for Dr. Feiner's testimony (sic) and  
15 cross-examination.

16 Plaintiff have a position?

17 MR. CARROLL: Your Honor, I think you  
18 should tell them that they are to rely on their  
19 memories.

20 THE COURT: Defendants?

21 Would you like to go in the jury room and  
22 just summarize it for them?

23 MR. RANDALL: I would, Your Honor. But I  
24 wasn't sure, did it say cross or did it say direct and  
25 cross?

2 MR. RANDALL: Yeah, my suggestion is,

3 perhaps, give them the transcript.

4 THE COURT: Well, my general practice is I  
5 just don't get into that, or we will be here for forever  
6 and then -- anyway, I plan to respond: Witness  
7 testimony is not available. You will need to rely on  
8 your recollection of the testimony.

9 Any objection?

10 MR. CARROLL: Not by the plaintiff, Your  
11 Honor.

12 MR. RANDALL: I would rather that they get  
13 the transcript.

14 THE COURT: So is that --

15 MR. RANDALL: It is an objection. I would  
16 rather they get the transcript.

17 THE COURT: All right. Objection is  
18 overruled.

19 In recess.

20 COURT SECURITY OFFICER: In recess.

21 (Recess pending jury verdict.)

22 (Jury out.)

23 THE COURT: Please be seated.

24 All right. The Court has been advised  
25 that the jury has reached a verdict.

2 jury in?

3 MR. CARROLL: Not from the plaintiff,

4 Your Honor.

5 MR. RANDALL: No, Your Honor.

6 THE COURT: All right. Please bring the  
7 jury in.

8 COURT SECURITY OFFICER: All rise for the  
9 jury.

10 (Jury in.)

11 THE COURT: Please be seated.

12 All right. Members of the jury, I  
13 understand you have reached a verdict.

14 FOREPERSON: (Nods.)

15 THE COURT: If you will, please hand your  
16 verdict form to the Court Security Officer.

17 (Verdict given to the Court.)

18 THE COURT: All right. Ms. Ferguson, if  
19 you will read the verdict, please.

20 COURTROOM DEPUTY: In Case No. 6:08cv88,  
21 Mirror Worlds versus Apple, Verdict of the Jury.

22 Answer as to Question 1A as to  
23 infringement as to all patents, the '427, '227, and  
24 '313, the answer is "yes."

25 Under 1B willful infringement, the

2 Question No. 2, answers as to the '427,

3 '227, and '313 patent, all answers are "no."

4 Under damages, under the '427 patent, the  
5 answer is "208.5 million."

6 Answer as to the '227 patent, "208.5  
7 million."

8 Answer as to the '313 patent, answer is  
9 "208.5 million."

10 Signed and dated on this day by the Jury  
11 Foreperson.

12 THE COURT: Thank you, Ms. Ferguson.

13 Is there any request to poll the jury?

14 MR. CARROLL: Not from the plaintiff,  
15 Your Honor.

16 MR. RANDALL: No, Your Honor.

17 THE COURT: Okay. Thank you.

18 All right. Members of the jury, I want  
19 to thank you on behalf of the Court and the members of  
20 both sides for your attendance here, all of your hard  
21 work, your attention.

22 You have worked very, very hard this week  
23 to reach the verdict that you have, and I want to thank  
24 you for that.

25 Now, I have previously instructed you

2 relieve you from those instructions. You are free to  
3 discuss the case with anyone you wish. But you are not  
4 required to discuss the case with anyone.

5 If anyone should contact you and you  
6 don't want to discuss the case with them, simply don't  
7 discuss it with them and tell them so.

8 If anyone approaches you and you don't  
9 want to be approached, just please let me know. But  
10 those are complete -- all of my instructions.

11 Any questions from any members of the  
12 jury?

13 Okay. Thank you very much for your  
14 service. You are excused to the jury room. Someone  
15 will be there in a moment to dismiss you.

16 COURT SECURITY OFFICER: All rise for the  
17 jury.

18 (Jury excused.)

19 THE COURT: Please be seated.

20 All right. Is there anything from the  
21 plaintiff?

22 MR. CARROLL: No, Your Honor.

23 THE COURT: Anything from the defendant?

24 MR. RANDALL: Briefly, Your Honor.

25 THE COURT: Okay.

2 abundance of caution -- I don't think it is necessary;  
3 but out of an abundance of caution, I renew our motion  
4 for judgment as a matter of law that we brought after  
5 the close of plaintiff's case and also after the close  
6 of the case and before it went to the jury.

7 I also intend to file a written motion  
8 for judgment as a matter of law and, alternatively, a  
9 request for new trial.

10 And the last thing, Your Honor, is that I  
11 would ask if the Court -- when the Court might give us a  
12 schedule for our inequitable conduct phase of this case?

13 THE COURT: The inequitable conduct is  
14 concluded. It was part of this trial.

15 MR. RANDALL: I believe that there was a  
16 motion in limine that excluded it from the presentation.

17 THE COURT: Well, it excluded it from the  
18 presentation of the evidence in front of the jury, but  
19 the practice is that if you have anything other than  
20 what would otherwise come in in front of the jury, that  
21 you present that to the Court as part of your time  
22 afterhours or during breaks or at the conclusion of a  
23 witness's testimony.

24 MR. RANDALL: All right. Okay. We will  
25 file our motions within the time limits.

3 I have been entering a briefing schedule,  
4 but what I am going to start doing is just do it  
5 according to the rules because I have had some people  
6 that didn't like it that way.

7 So the Court will enter final judgment in  
8 accordance with the jury verdict. I will receive your  
9 motions, and then set a hearing on them as soon as we  
get all of that in.

10 Unless the parties wish to meet and  
11 confer and agree on a tighter briefing schedule than  
12 provided by the rules, we will be going by what is  
13 provided by the rules.

14 Okay. Anything further?

15 MR. RANDALL: No, Your Honor.

16 THE COURT: All right. Y'all have a good  
17 weekend.

18 We will be adjourned.

19 (End of trial.)

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3 I HEREBY CERTIFY that the foregoing is a  
4 true and correct transcript from the stenographic notes  
5 of the proceedings in the above-entitled matter to the  
6 best of our abilities.

7

8

9 /s/ \_\_\_\_\_ Date  
10 SHEA SLOAN, CSR  
Official Court Reporter  
State of Texas No.: 3081  
11 Expiration Date: 12/31/10

12

13

/s/ \_\_\_\_\_ Date  
14 JUDITH WERLINGER, CSR  
Deputy Official Court Reporter  
15 State of Texas No.: 731  
Expiration Date 12/31/10

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